

**FILED**  
AUG 10 2021  
CLERK OF SUPREME COURT  
OF WISCONSIN

**Wisconsin Supreme Court**

No. \_\_\_\_\_

**Court of appeals 20AP840**

St. Croix county Lower court Case number 19CV 0108 Class code 30607 Judge Edward Vlack

110 East main Street Suit 215

P. O. Box 1688

Madison Wisconsin 53701 – 1688

August 6<sup>th</sup>, 2021

**Pat Schottler** Petitioner

9:18 AM

sent

V

The department of transportation Secretary Dave Ross  
ending

**Appendix**

Case. 20AP840 Wisconsin court of appeals

St. Croix county Circuit court Case number 19CV 0108

Pat Schottler

1479 160<sup>th</sup>. St.

New Richmond WI 54017

612 – 963 – 5547 leave message I do not answer my phone

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CV-55	<b>Civil Court Record</b>	04-29-2020 02:01 pm
Pat vs. The Department of Transportation Secretary Dave Ross ending	Civil Responsible C.O. Edward Vlack	Case Number 2019CV000108
SIS Code: 30607 - Administrative Agency Review		

Filing Date/C.O.	Disposition Date/C.O.	Disposition	Next Action
03-11-2019 Edward Vlack	04-09-2020 Edward Vlack	Dismissed	04-30-2020 07:45 am Review exhibits/return 05-13-2020 08:00 am Review

Party Type	Name	Address	City	St	Zip	Attorney	Status
Petitioner	Pat Schottler	1479 160th St.	New Richmond	WI	54017		AC
Respondent	The Department of Transportation Secretary Dave Ross ending					Christopher J Blythe	AC

Date	Court Record Entries	Amount	C.O. Court Reporter Tape/Counter Location
03-11-2019	Petition Petition for Judicial Review with attached Certificate of Mailing. Filed by PE. 3C: PE. glg		
03-11-2019	Filing fee paid 19R 003719	129.50	
03-11-2019	Other papers Judicial Statement with USB with attached Certificate of Mailing. Filed by PE. 3C: PE. glg		
03-12-2019	File Retained Electronically		
03-15-2019	Other papers WI DOT Record. Filed by WI DOT. glg		
03-21-2019	Proof of service by return receipt Filed by PE. glg		
03-21-2019	Letters/correspondence from Petitioner re enclosing green cards and problem with record. glg		
03-21-2019	Telephone message PE left voicemail on 3/20 after hours asking if he could stop by tomorrow 3/21 with a TV and plywood to test in EFV's courtroom. Clerk left return voicemail on 3/21 stating that a hearing hasn't been scheduled in this case yet and advised PE should write a letter requesting a hearing and copy the other party. Clerk also informed PE that he will need to set up an appointment with JA to schedule a time to test out equipment in courtroom after a hearing is scheduled. glg		
03-21-2019	Letters/correspondence from PE requesting items in court room for hearing with attached pictures. glg to rg on 3/21/19		
03-21-2019	Letters/correspondence from PE dated 3/20/19 re request to add to the record. glg to rg on 3/21/19		
04-15-2019	Case Converted to Electronic Filing		
04-15-2019	Electronic Filing Notice		
04-15-2019	Notice of Appearance and Statement of Position on behalf of Respondent WI DOT. Filed by Atty Tarver. glg		
04-15-2019	Electronic Notice Update		

CV-400(CCAP), 11/00 Civil Court Record

This form shall not be modified. It may be supplemented with additional material.

TY-55

## Civil Court Record

04-29-2020

AT

Civil

02:01 pm

er vs. The Department of Transportation Secretary Dave  
ding

Responsible C.O.  
Edward Vlack

Case Number  
2019CV000108

IS Code: 30607 - Administrative Agency Review

Date	Court Record Entries	Amount	C.O. Court Reporter Tape/Counter Location
04-15-2019	Certificate of mailing Copy of Notice of Appearance and Statement of Position mailed to Pat Schottler on 4/15/19. Filed by Atty Tarver. glg		
04-15-2019	Other papers Filed by Pat Schottler. glg		
04-18-2019	Letters/correspondence From Petitioner replying to e-filing notice. glg to rg on 4/18/19		
04-23-2019	Other papers Request for status and information hearing. Filed by PE. glg to rg on 4/23/19		
04-30-2019	Proof of service by return receipt Filed by Pat Schottler. glg		
05-03-2019	Letters/correspondence from Pat Schottler dated 4/22/19 with proof of service. glg to rg on 5/3/19		
05-14-2019	Substitution of attorney Notice of Substitution for Respondent WI DOT. Filed by Atty Blythe. glg		
05-14-2019	Electronic Notice Update		
05-14-2019	Certificate of service Notice of Substitution mailed to Pat Schottler on 5/14/19. Filed by Atty Blythe. glg		
05-14-2019	Electronic Notice Update		
05-16-2019	Motion Motion for Costs and Seeking Other Orders. Filed by PE. glg to rg on 5/16/19		
05-16-2019	Response/reply Response to States Response of My Complaint. Filed by PE. glg to rg on 5/16/19		
05-16-2019	Certificate of service Copy of Notice of Motion and Motion to Dismiss mailed to Pat Schottler on 5/16/19. Filed by Atty Blythe. glg		
05-16-2019	Notice of motion, motion Filed by Atty Blythe. glg to rg on 5/16/19		
05-20-2019	Response/reply Opposing Motion to Dismiss. Filed by PE. glg to rg on 5/20/19		
05-21-2019	Brief in support of motion Respondents' Reply Brief in Support of Motion to Dismiss. Filed by Atty Blythe. glg		
05-21-2019	Certificate of service Respondents' Reply Brief in Support of Motion to Dismiss mailed to Pat Schottler on 5/21/19. Filed by Atty Blythe. glg		
05-23-2019	Certificate of mailing Copy of Response to States Response of Complaint mailed to DOT. Filed by PE. glg		

TY-55  
AT

**Civil Court Record**  
Civil

04-29-2020  
02:01 pm

er vs. The Department of Transportation Secretary Dave  
ending

**Responsible C.O.**  
Edward Vlack

**Case Number**  
2019CV000108

**IS Code: 30607 - Administrative Agency Review**

Date	Court Record Entries	Amount	C.O. Court Reporter Tape/Counter Location
05-30-2019	Motion Five Motions for Orders not sought before. Filed by PE. glg to rg on 5/30/19		
06-10-2019	Proof of mailing of Five Motions for Orders not sought to WI DOJ and COC filed by the PL. kak		
07-15-2019	Other papers Work Book (study aid). Filed by PE Pat Schottler. glg to EFV on 7/15/19		
07-23-2019	Proof of mailing Copy of Work book (study aid) via certified mail to WI DOJ on 7/22/19. Filed by PE. glg		
07-24-2019	Proof of mailing Copy of Work book (study aid) rec'd via certified mail by Clerk of Court on 7/15/19. Filed by PE. glg		
08-14-2019	Request for Status Conference. Filed by PE. kma to rg on 8/16/19		
09-16-2019	Other papers Seeking Immediate Judicial Order. Filed by PE. kma to rg on 9/17/19		
09-25-2019	Notice of hearing Telephone scheduling conference on October 3, 2019 at 08:15 am.		
10-03-2019	Telephone scheduling conference 08:24 AM CO: Vlack, Reporter: Gross, Clerk: Lindabaur. Petitioner Pat Schottler in court. Attorney Christopher J Blythe appeared by phone means for Respondent The Department of Transportation Secretary Dave Ross ending. Court reviews file. PE will be filing corrected motions today. Atty Blythe doesn't believe he will be filing anything further. Court will review file and schedule hearing for next week. gll Hearing scheduled for October 10, 2019 at 11:30 am.		Edward Vlack Gina A Gross
10-03-2019	Notice of hearing Hearing on October 10, 2019 at 11:30 am.		
10-03-2019	Motion Corrections to motions orders asked for. Filed by PE. gll		
10-10-2019	Hearing 11:30 AM CO: Vlack, Reporter: Gross, Clerk: Lindabaur. Petitioner Pat Schottler in court. Attorney Christopher J Blythe appeared by phone means for Respondent The Department of Transportation Secretary Dave Ross ending. Court questions parties. Petitioner argues. Court will allow parties to submit further filings no later than 4:30 p.m. on 10/21/19 regarding the Court's questions. gll		Edward Vlack Gina A Gross
10-16-2019	Brief Respondents' Supplemental Brief in Response to the Court's Questions. Filed by Atty. Blythe. kma to rg on 10/16/19		
10-16-2019	Certificate of service of Respondent's Supplemental Brief in Response to the Court's Questions mailed to Pat Schottler. Filed by Atty. Blythe. kma		

TY-55  
RT

**Civil Court Record**  
Civil

04-29-2020  
02:01 pm

atter vs. The Department of Transportation Secretary Dave  
nding

**Responsible C.O.**  
Edward Vlack

**Case Number**  
2019CV000108

**SIS Code: 30607 - Administrative Agency Review**

Date	Court Record Entries	Amount	C.O. Court Reporter Tape/Counter Location
10-17-2019	Other papers Judicial Request for document by October 21st. Filed by PE. kma to rg on 10/18/19		
10-21-2019	Other papers Typographical Error Correction to document. Filed by PL. kma to rg on 10/21/19		
11-13-2019	Other papers "Seeking permission to respond to opposing counsel's" Oct, 16th, 2019 document judge asked for by Oct 21st. Filed by PE. 3C: PE. gll to rg on 11/14/19		
11-13-2019	Received documents Cover letter with "Seeking permission to respond to opposing counsel's" Oct, 16th, 2019 document judge asked for by Oct 21st. gll		
01-13-2020	Letters/correspondence Filed by PE Pat Schottler. kma to rg on 1/14/2020		
03-06-2020	Motion for Adversary Council. Filed by PE. kma to rg on 3/6/20		
03-06-2020	Motion to Reverse according to Statute 227.57(8). Filed by PE. kma to rg on 3/6/20		
03-13-2020	Motion to rescind. Filed by PE. kma to rg on 3/13/20		
03-23-2020	Other papers Questions on properly being before the court. Filed by PE. kma to rg on 3/23/20		
04-09-2020	Decision and order ... It is hereby ordered that the Department's Motion to Dismiss is hereby granted and this case is dismissed. Signed by EFV on 4/9/20. ec: RE, c: Petitioner. gll		Edward Vlack
04-09-2020	Dismissed		Edward Vlack
04-29-2020	Other papers "Verify Questions". Filed by PE. kma to rg on 4/29/20		
04-29-2020	Motion for reconsideration of dismissal w/ attachment. Filed by PE. Clerk notes that attachment is unable to be retained electronically - retained on civil shelf in COC for file retention. kma to rg on 4/29/20		
04-29-2020	Notice of appeal Filed by PE. kma		
04-29-2020	Notice of appeal transmittal Signed by Clerk on 4/29/20. Original mailed certified to COA w/ copy of NOA and court record on 3/11/20. ec: Atty. Blythe; C via mail: PE. kma		



OFFICE OF THE CLERK  
**WISCONSIN COURT OF APPEALS**

110 EAST MAIN STREET, SUITE 215

P.O. BOX 1688

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**DISTRICT III**

July 6, 2021

To:

Hon. Edward F. Vlack III  
 Circuit Court Judge  
 St. Croix County Courthouse  
 Electronic Notice

Kristi Severson  
 Clerk of Circuit Court  
 St. Croix County Courthouse  
 Electronic Notice

Anthony Russomanno  
 Assistant Attorney General  
 Electronic Notice

Pat Schottler  
 1479 160th St.  
 New Richmond, WI 54017

You are hereby notified that the Court has entered the following order:

2020AP840

Pat Schottler v. The Department of Transportation Secretary  
 Dave Ross (L. C. No. 2019CV108)

Before Stark, P.J., Hruz and Seidl, JJ.

Pat Schottler, pro se, has filed a "Motion for Reconsideration #1" from our summary order dated June 22, 2021, in which the sole issue presented for appeal was whether the circuit court properly granted the Wisconsin Department of Transportation's motion to dismiss Pat Schottler's petition for judicial review as untimely. The motion for reconsideration is denied. We also note the motion states, "#1 of several motions for reconsideration." In this regard, Schottler is admonished there is no statutory authority for multiple motions for reconsideration.

Upon the foregoing,

IT IS ORDERED that the motion for reconsideration is denied.

*Sheila T. Reiff*  
 Clerk of Court of Appeals



OFFICE OF THE CLERK  
**WISCONSIN COURT OF APPEALS**

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**DISTRICT III**

June 22, 2021

To:

Hon. Edward F. Vlack III  
Circuit Court Judge  
St. Croix County Courthouse  
1101 Carmichael Rd.  
Hudson, WI 54016

Kristi Severson  
Clerk of Circuit Court  
1101 Carmichael Rd.  
Hudson, WI 54016

Anthony Russomanno  
Assistant Attorney General  
P.O. Box 7857  
Madison, WI 53707-7857

Pat Schottler  
1479 160th St.  
New Richmond, WI 54017

You are hereby notified that the Court has entered the following opinion and order:

---

2020AP840

Pat Schottler v. The Department of Transportation Secretary  
Dave Ross (L. C. No. 2019CV108)

Before Stark, P.J., Hruz and Seidl, JJ.

**Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).**

The sole issue presented for appeal is whether the circuit court properly granted the Wisconsin Department of Transportation's (DOT) motion to dismiss Pat Schottler's petition for judicial review as untimely. Based on our review of the briefs and record, we conclude at conference that this case is appropriate for summary disposition, and we summarily affirm the judgment. *See* WIS. STAT. RULE 809.21 (2019-20).<sup>1</sup>

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<sup>1</sup> All references to the Wisconsin Statutes are to the 2019-20 version unless otherwise noted.

No. 2020AP840

On March 12, 2014, the DOT informed Schottler that it had received information “caus[ing] us to question your ability to safely operate a motor vehicle.” The information included correspondence from the St. Croix County sheriff that stated he was in receipt of a letter from Schottler in which Schottler talked about being deprived of sleep and, as a result, “unable to safely operate a vehicle on our roadways.” Schottler’s letter—a copy of which was attached to the sheriff’s correspondence to DOT—discussed “endangering others['] lives” and circumstances where “someone could have gotten killed,” among other things. The sheriff responded to Schottler that “[a]s a result of your own admissions, I am obligated to report this matter to the Wisconsin Department of Transportation so that they may assess your ability to safely operate a vehicle on our roadways.”

The DOT ordered Schottler to submit to an examination in accordance with WIS. STAT. § 343.16(6)(a). The notice informed Schottler that he needed to have a medical provider complete certain medical forms within thirty days of the order to ensure he met the medical standards for licensing. The notice also stated: “Even if the form indicates that you meet the medical standards for licensing, you may still be required to complete a re-examination of your driving abilities. We will make that determination only after we receive the completed medical form.”

Schottler failed to provide the medical forms within the prescribed time frame, and on April 11, 2014, the DOT cancelled Schottler’s license to operate commercial motor vehicles. The cancellation informed Schottler that he had a right to judicial review of the decision, under WIS. STAT. § 343.40, subject to a thirty-day deadline.

No. 2020AP840

Schottler filed a petition for judicial review in March 2019, nearly five years after the DOT canceled Schottler's license. The DOT filed a motion to dismiss the petition as untimely. The circuit court granted the motion, and Schottler now appeals.

The mechanisms for judicial review contained in Wis. STAT. ch. 227 apply to the administrative decision here. See Wis. STAT. § 343.40. WISCONSIN STAT. § 227.53(1)(a)2. sets forth a thirty-day deadline from the date of service of an administrative decision to serve and file a petition for judicial review of that decision. Once the thirty-day time limitation is triggered, strict compliance is required, and failure to comply with the mandatory time limitation results in the lack of circuit court competency to proceed, and the petition must be dismissed. *Wisconsin Power & Light Co. v. PSC*, 2006 WI App 221, ¶11, 296 Wis. 2d 705, 725 N.W.2d 423.

Here, the adverse agency decision is the April 11, 2014 decision cancelling Schottler's commercial driver's license for failure to supply medical documentation. His current petition falls far outside the thirty-day time limit for judicial review. The circuit court lacked competency to proceed, and it was required to dismiss the petition.

Nevertheless, Schottler argues in his reply brief that he is entitled to a hearing under Wis. STAT. § 227.42, to present evidence concerning his fitness to possess a driver's license. According to Schottler, his request for a hearing renders timely his March 11, 2019 petition for judicial review and the circuit court erred in concluding that there were no disputed material questions of fact providing a basis for a hearing.

Schottler's request for a hearing does nothing to resuscitate his time-barred challenge. Again, as a general matter, Wis. STAT. § 227.53(1)(a)2. affords a petitioner thirty days from the date of service of the original adverse agency decision to file a petition for judicial review. See

No. 2020AP840

**IT IS FURTHER ORDERED** that this summary disposition order will not be published.

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*Sheila T. Reiff*  
*Clerk of Court of Appeals*



OFFICE OF THE CLERK  
**WISCONSIN COURT OF APPEALS**

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**DISTRICT III**

August 21, 2020

To:

Kristi Severson  
 Clerk of Circuit Court  
 St. Croix County Courthouse  
 1101 Carmichael Road  
 Hudson, WI 54016

Anthony Russomanno  
 Assistant Attorney General  
 P.O. Box 7857  
 Madison, WI 53707-7857

Pat Schottler  
 1479 160th St.  
 New Richmond, WI 54017

You are hereby notified that the Court has entered the following order:

2020AP840

Pat Schottler v. The Department of Transportation Secretary Dave  
 Ross Ending

Before Stark, P.J.

Appellant Pat Schottler, pro se, has filed a "motion to define dispute of material fact," that also appears to seek a definition of jurisdiction. The motion states that Schottler's brief "won't be accurate without these two subjects defined." This court cannot dispense legal advice. Therefore, the motion will be denied.

For additional guidance regarding appellate rules and procedures, we have enclosed with this order to Schottler an information sheet regarding the Appellate Help Desk of the Wisconsin State Bar's Appellate Practice Section.

Schottler has also filed a new notice of appeal, along with a statement on transcript indicating that no further transcripts are necessary, and a document entitled "motion to consolidate appeals is not needed." Because we construe the new notice of appeal as an

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reconsideration motion is entered; and (2) move to consolidate the appeals. We would then further toll briefing in the existing appeal.

IT IS FURTHER ORDERED that we will take no action on the document titled "non ex parte."

IT IS FURTHER ORDERED that Schottler's request for costs is dismissed as prematurely filed.

---

*Sheila T. Reiff*  
*Clerk of Court of Appeals*



OFFICE OF THE CLERK  
**WISCONSIN COURT OF APPEALS**

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**DISTRICT III**

July 2, 2020

To:

Hon. Edward F. Vlack III  
 Circuit Court Judge  
 St. Croix County Courthouse  
 1101 Carmichael Rd.  
 Hudson, WI 54016

Kristi Severson  
 Clerk of Circuit Court  
 St. Croix County Courthouse  
 1101 Carmichael Road  
 Hudson, WI 54016

Anthony Russomanno  
 Assistant Attorney General  
 P.O. Box 7857  
 Madison, WI 53707-7857

Pat Schottler  
 1479 160th St.  
 New Richmond, WI 54017

You are hereby notified that the Court has entered the following order:

2020AP840

Pat Schottler v. The Department of Transportation Secretary Dave  
 Ross Ending (L.C. # 2019CV108)

Before Stark, P.J.

Appellant Pat Schottler, pro se, has filed what appears to be a motion to supplement the record with "two significant exhibits"—one titled "Judge Vlack 19CV0108 343.25(7)" and the other titled "Verify." The first item could not be transmitted electronically due to its size; however, it has been sent to this court and is included in the record as item No. 33 on the index. The document titled "Verify" was electronically transmitted as item No. 32 in the record. The motion to supplement the record with these items will therefore be dismissed as unnecessary.

Schottler also moves to stay appellate proceedings pending the circuit court's disposition of a motion for reconsideration pending there. The respondent has not opposed the motion. Schottler states that a decision on the reconsideration motion may impact the issues in his

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existing appeal. Therefore, we will stay briefing pending disposition of the motion for reconsideration. We note that if the appellant is ultimately aggrieved by the decision on his reconsideration motion and wants review of that decision along with his existing appeal, he must (1) file a new notice of appeal within thirty days of the date the order disposing of the reconsideration motion is entered; and (2) move to consolidate the appeals. We would then further toll briefing in the existing appeal.

Schottler has also submitted a document titled "non ex parte" consisting of "communication between counsels and other party." This appears to be a courtesy copy of correspondence Schottler sent to opposing counsel setting forth his impressions on the merits of his case. We will take no action on that submission. Schottler also filed what appears to be a statement of costs for this appeal pursuant to WIS. STAT. RULE 809.25(1)(c) and WIS. STAT. § 227.485(8) and (5). Until a decision on the merits of the appeal is rendered by this court, his request for costs is premature. We will therefore strike the request as premature.

Upon the foregoing,

IT IS ORDERED that the motion to supplement the record is dismissed.

IT IS FURTHER ORDERED that the time for filing the appellant's brief is extended to forty days from the date the circuit court enters its order deciding the reconsideration motion. The appellant shall immediately notify this court once the order on reconsideration is entered.

IT IS FURTHER ORDERED that *if* the appellant is ultimately aggrieved by the decision on his reconsideration motion and wants review of that decision along with his existing appeal, he must (1) file a new notice of appeal within thirty days of the date the order disposing of the

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additional notice of appeal in the existing matter, consolidation would not be necessary. We will order the circuit court clerk to transmit the notice of appeal and any additional documents by supplemental return, and sua sponte extend the time for Schottler to file his brief-in-chief.

Upon the foregoing,

IT IS ORDERED that the “motion to define dispute of material fact” is denied.

IT IS FURTHER ORDERED that the clerk of this court shall include a copy of the information sheet regarding the Appellate Help Desk with this order to Schottler.

IT IS FURTHER ORDERED that the circuit court clerk shall immediately transmit the additional notice of appeal and any documents filed since the first record transmittal by supplemental return.

IT IS FURTHER ORDERED that the appellant’s brief will be due thirty days from the date of the supplemental return.

---

*Sheila T. Reiff*  
*Clerk of Court of Appeals*



claims are subject to sovereign immunity, and (3) the petition for judicial review "cannot be combined with other civil actions."

On May 20, 2019, Mr. Schottler filed a document titled "Opposing motion to dismiss," which, in summary, repeated his prior requests.

On May 21, 2019, the Department filed the "Respondent's Reply Brief in Support of Motion to Dismiss," wherein the Department set forth its arguments that (1) the Petitioner was not entitled to a hearing under Wis. Stat. Sec. 227.42, (2) that Wis. Stat. Sec. 343.30(1q)(d) does not apply to cancellation of licenses, and, (3) the Petitioner is not entitled to \$300 per day costs under Wis. Stat. Sec. 227.485.

On May 30, 2019, Mr. Schottler filed a document titled "Five Motions for Orders not sought before dated this May 28, 2019." In this document, Mr. Schottler asserted, in summary, that (1) the reference to "ordered" in Wis. Stat. Sec. 343.25(7), requires a court order, (2) if an examination is required by the Secretary under Wis. Stat. Sec. 343.16(5), that person's operating privilege cannot be revoked "if they are not in a 51.42, 51.45(7)(h) or 345.60," (3) the "department of transportation cannot revoke Pat Schottler's driving privilege," (4) orders for "people to take tests under 345.16(5) ... must come from a 51.42, or 51.45(7)(h) or 345.60 agency," and (5) "the department of transportation can not cancel anyone's license for refusing to go see a psychiatrist if they are not in a 51.42, 51.45(7)(h) or 345.60."

A hearing was held before this Court on October 10, 2019, at the conclusion of which both sides were given the opportunity to submit further argument.

On October 16, 2019, the Department submitted the "Respondent's Supplemental Brief in Response to the Court's Questions." In summary, the Department first repeated its position that Mr.

Case 2019CV000108

Document 87

Filed 08-10-2020

Page 3 of 6

Schottler's request for judicial review was untimely, asserted that the term "ordered" in Wis. Stat. Sec. 343.25(7) does not require a court order, and advised where documents were located in the record.

On October 17, 2019, Mr. Schottler filed a document titled "Judicial request for document by Oct 21<sup>st</sup>" which, in summary, recognized that the Department's action was a cancellation and not a revocation of his driver's license, acknowledged (on page 7) that "apparently the Secretary can issue an 'order,'" that the order "MUST BE SIGNED BY THE Secretary of the department of Transportation" (page 27), and that the cancellation was not legal as there was no "Order under 343.16 or 343.32(2)" which he failed to comply with.

On October 21, 2019, Mr. Schottler filed a document titled "Typographical Error Correction to document," which made corrections to the document Mr. Schottler submitted on October 17, 2019.

On November 13, 2019, Mr. Schottler submitted a document titled "Seeking permission to respond to opposing counsel's." and in this document, among other things, stated on page 13 that "The word ordered in 343.25(7) is a court order." states on page 15 that "343.16(5)(a) does not apply." and that the cancellation was not valid.

On April 9, 2020, this Court issued its Decision and Order granting the Department's Motion to Dismiss and dismissed the case.

On April 29, 2020, Mr. Schottler filed a Motion for Reconsideration of dismissal, asserting that in his Petition for Review that he was seeking review under Wis. Stat. Sec. 227.42(2), and made other arguments.

On May 5, 2020, the Department filed its Brief in Opposition to Petitioner's Motion for Reconsideration, asserting that the Motion for Reconsideration did not argue anything new.

On May 11, 2020, Mr. Schottler filed a Response to opposing councils response.

### LEGAL AUTHORITY

On a motion for reconsideration, the movant must “present either newly discovered evidence or establish a manifest error of law or fact.” *Koepsell’s Olde Popcorn Wagons, Inc. v. Koepsell’s Festival Popcorn Wagons, Ltd.*, 2004 WI App 129, ¶ 44, 275 Wis. 2d 397, 416, 685 N.W.2d 853 (citing *Oto v. Metro. Life Ins. Co.*, 224 F.3d 601, 606 (7th Cir. 2000)). A manifest error of law is the “wholesale disregard, misapplication, or failure to recognize controlling precedent.” *Id.* Stated another way, “manifest error contemplates that self-evident kind of error which results from ordinary human failings due to oversight, omission or miscalculation. It is the type of error which tends to immediately reveal itself as such to reasonable legal minds.” *Schimmer v. Schimmer*, 143 Wis. 2d 81, 92-93, 420 N.W.2d 381 (Ct. App. 1988).

### ANALYSIS

Mr. Schottler is correct that this Court’s April 9, 2020, Decision and Order, did not specifically address his request for a hearing under Wis. Stat. Sec. 227.42(2). At best, this Court included it in this Court’s broad reference to Mr. Schottler’s other arguments, stating on page 17 of the April 9, 2020, Decision and Order:

This Court recognizes that Mr. Schottler made other arguments pertaining to the cancellation of his license, *including a request for hearing* and that the letters of March 12 and April 11, 2014, should have been signed by the secretary. Further, this Court recognizes that Mr. Schottler is very passionate about his belief that his driver’s license was wrongfully cancelled. Finally, this Court recognizes that dismissal may be a harsh ending to this proceeding. However, as noted, both the Wisconsin Supreme Court and the Wisconsin Court of Appeals have clearly declared that the time limits for seeking judicial review are mandatory, and, if not complied with, this Court is required to follow the mandates of the Wisconsin Supreme Court and the Wisconsin Court of Appeals, and dismiss these proceedings. (emphasis added)

However, the failure to address that specific claim does not necessarily mean that reconsideration should be granted.

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Wis. Stat. Sec. 227.42 states as follows:

**227.42. Right to hearing**

(1) In addition to any other right provided by law, any person filing a written request with an agency for hearing shall have the right to a hearing which shall be treated as a contested case if:

(a) A substantial interest of the person is injured in fact or threatened with injury by agency action or inaction;

(b) There is no evidence of legislative intent that the interest is not to be protected;

(c) The injury to the person requesting a hearing is different in kind or degree from injury to the general public caused by the agency action or inaction; and

(d) There is a dispute of material fact.

(2) Any denial of a request for a hearing shall be in writing, shall state the reasons for denial, and is an order reviewable under this chapter. If the agency does not enter an order disposing of the request for hearing within 20 days from the date of filing, the request shall be deemed denied as of the end of the 20-day period.

(3) This section does not apply to rule-making proceedings or rehearings, or to actions where hearings at the discretion of the agency are expressly authorized by law.

(5) Except as provided under s. 289.27(1), this section does not apply to any part of the process for approving a feasibility report, plan of operation or license under subch. III of ch. 289 or s. 291.23, 291.25, 291.29 or 291.31, any decision by the department of natural resources relating to the environmental impact of a proposed action under ch. 289 or 291 or ss. 292.31 and 292.35, or any part of the process of negotiation and arbitration under s. 289.33.

(6) This section does not apply to a decision issued or a hearing conducted under s. 291.87.

As Wis. Stat. Sec. 227.42(1) states, in order to be entitled to a hearing under Wis. Stat. Sec. 227.42, the person must satisfy four criteria. For sake of discussion, this Court will consider a loss of driving privileges as a substantial interest and that there is "no evidence of legislative intent that the interest is not to be protected." However, how is the alleged injury to Mr. Schottler any different from "injury to the general public?" More importantly, this Court agrees with the Department that there is no

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issue of material fact. As the Department stated on page 3 of its Brief in Opposition to Petitioner's Motion for Reconsideration:

But as respondents previously point out, that statute is not applicable to this matter, because, among other things, there is no dispute of material fact. The right to a hearing under Wis. Stat. § 227.42 is dependent on several elements, one of which is that there must be a dispute of material fact. Wis. Stat. § 227.42(1)(d). Here, there was no dispute of a material fact as to the reason for the agency's cancellation of the petitioner's license.<sup>2</sup> The agency sent him notice – that is not disputed. The petitioner did not provide the required documents within 30 days – that is not disputed. That is the basis for the DOT's cancellation of the petitioner's license – the failure to submit to a medical exam and to produce the required medical reports.

This Court agrees that there is no issue of material fact. Therefore, Mr. Schottler was not entitled to a hearing under Wis. Stat. Sec. 227.42(2).

#### DECISION AND ORDER

For the reasons set forth herein, IT IS HEREBY ORDERED, that the Petitioner's Request for Reconsideration is denied.

THIS ORDER CONSTITUTES A FINAL ORDER FOR PURPOSES OF APPEAL.

Dated this 7<sup>th</sup> day of August, 2020.

By the Court,

\_\_\_\_\_  
Hon. Edward F. Vlack  
St. Croix County Circuit Court Judge  
Br. 2

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FILED  
04-09-2020  
Circuit Court  
St. Croix County, WI  
2019CV000108

BY THE COURT:

DATE SIGNED: April 9, 2020

Electronically signed by Edward F. Vlack, Circuit Court Branch II  
Circuit Court Judge

STATE OF WISCONSIN	CIRCUIT COURT	ST. CROIX COUNTY
PAT SCHOTTLER, Petitioner,		<b>DECISION AND ORDER</b>
vs.		
WISCONSIN DEPARTMENT OF TRANSPORTATION, SECRETARY DAVE ROSS, and/or SECRETARY CRAIG THOMPSON,		Case No.: 19 CV 108
Respondents.		

**BACKGROUND**

On March 11, 2019, the Petitioner, Mr. Pat Schlottler, filed a Petition for Judicial Review with the St. Croix County Clerk of Court Office, consisting of 120 pages, together with a Judicial Statement, consisting of 22 pages. Subsequently, on March 15, 2019, Mr. Schottler filed documentation designated as the Record from the Wisconsin Department of Transportation consisting of 343 pages. In this matter, in summary, Mr. Schottler seeks judicial review (pursuant to Wis. Stats. Sec. 343.40 and Wis. Stats. Chap. 227) of the cancellation of his driver's license by the Wisconsin Department of Transportation April 11, 2014. Further, again in summary, Mr. Schottler seeks compensation for "being denied a driver's license" (Petition page 22, item 10) and compensation for "not being allowed a driver's license over these past four years." (Petition page 22, item 14).

|

On April 15, 2019, the Respondent, Wisconsin Department of Transportation (the "Department"), filed a Notice of Appearance and Statement of Position. In summary, the Department takes the position that the administrative decision (of cancelling the Petitioner's driver's license) was reached "through proper procedures, is supported by substantial evidence in the administrative record, properly interprets and applies the applicable law, did not involve any abuse of discretion, and is otherwise legal and proper in all respects." (Statement of Position).

On April 23, 2019, Mr. Schottler filed a "Request for status and information hearing." Subsequently, on May 16, 2019, Mr. Schottler filed two documents, one titled "Response to states Response of my Complaint," wherein, in summary, Mr. Schottler disagrees with the position of the Department, and a second titled "Motion for costs and seeking other orders," wherein, in summary, Mr. Schottler states his request for \$300 a day in compensation.

Also on May 16, 2019, the Department filed a Notice of Motion and Motion to Dismiss. In summary, the Department seeks (1) dismissal of the request for judicial review on the grounds it was not filed and served within 30 days of the April 11, 2014, cancellation of Mr. Schottler's driver's license, and, (2) seeks dismissal of the claims Mr. Schottler makes beyond judicial review on the grounds of sovereign immunity, that the Department and the Secretary are not "persons" for purposes of "any claim of a violation of the petitioner's constitutional rights," and (3) the petition for judicial review "cannot be combined with other civil actions."

On May 20, 2019, Mr. Schottler filed a document titled "Opposing motion to dismiss," in which, again in summary, he repeats that this matter includes a request for judicial review under Wis. Stat. Sec. 343.40, and, since judicial reviews under Wis. Stat. Sec. 343.40 are to proceed in the "manner provided in ch. 227 for the review of administrative decisions," Mr. Schottler seeks a hearing under Wis. Stat. Sec. 227.42, and also reviews the reasons he believes the cancellation of his driver's license was

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wrongful (that it should have proceeded under Wis. Stat. Sec. 343.30(1q)(d)), and restates his request for \$300 per day compensation.

On May 21, 2019, the Department filed the "Respondent's Reply Brief in Support of Motion to Dismiss," wherein the Department set forth its arguments that (1) the Petitioner was not entitled to a hearing under Wis. Stat. Sec. 227.42, (2) that Wis. Stat. Sec. 343.30(1q)(d) does not apply to cancellation of licenses, and, (3) the Petitioner is not entitled to \$300 per day costs under Wis. Stat. Sec. 227.485.

On May 30, 2019, Mr. Schottler filed a document titled "Five Motions for Orders not sought before dated this May 28, 2019." In this document, Mr. Schottler asserted, in summary, that (1) the reference to "ordered" in Wis. Stat. Sec. 343.25(7), requires a court order, (2) if an examination is required by the Secretary under Wis. Stat. Sec. 343.16(5), that person's operating privilege cannot be revoked "if they are not in a 51.42, 51.45(7)(h) or 345.60," (3) the "department of transportation cannot revoke Pat Schottler's driving privilege," (4) orders for "people to take tests under 345.16(5)... must come from a 51.42, or 51.45(7)(h) or 345.60 agency," and (5) "the department of transportation can not cancel anyone's license for refusing to go see a psychiatrist if they are not in a 51.42, 51.45(7)(h) or 345.60."

On July 15, 2019, Mr. Schottler filed a "Work book (study aid)" that summarized his arguments.

On August 14, 2019, Mr. Schottler filed a "Request for Status Conference Aug 14<sup>th</sup> 2019."

On September 25, 2019, a Notice of Hearing was mailed out, setting this matter for a telephone scheduling conference on October 3, 2019.

This Court held a status/scheduling conference with Mr. Schottler and Atty. Blythe (on behalf of the Department) on October 3, 2019. The Court inquired if either desired to file anything else in support of their position. Mr. Schottler desired to do so, and did file a document entitled "Corrections to

motions orders I asked for." This Court then advised both Mr. Schottler and Mr. Blythe that the documents would be reviewed by this Court and the matter was set for further hearing on October 10, 2019, in the event this Court had questions.

On October 10, 2019, this Court did have questions, which are summarized as follows:

- (1) The first letter to Mr. Schottler dated March 12, 2014 (DOT record page 333) referenced "completed form(s)" and this Court inquired if those requested form(s) were in the record. Advised yes at pages 178 to 181.
- (2) The letter of March 12, 2014, also referenced information on "Voluntary Temporary Surrender of License (VTS)," and this Court inquired if that information was in the record. Advised yes at page 329.
- (3) This Court asked if the letter of April 11, 2014, advising Mr. Schottler that his license was cancelled was part of the record. Advised yes at pages 295 to 295.
- (4) This Court noted that Wis. Stat. Sec. 343.25(7), referenced in the letter of April 11, 2014, includes the phrase "When a person who has been ordered to submit to an examination under s. 343.16." This Court inquired if the word "ordered" was defined anywhere.
- (5) This Court inquired if the Department considered the letter of March 12, 2014, to be an "order."
- (6) This Court noted that Mr. Schottler, on page 3 of the documentation he filed on October 3, 2014, that he argued any "documents requesting or requiring any examinations under 343.25(7) or 343.16 must be signed by the secretary of transportation," and he was asked for the legal authority for that statement.
- (7) This Court also noted that Mr. Schottler, on page 3 of the documentation he filed on October 3, 2014, that he argued that "No drivers license can be cancelled with out a case number," and he was asked for the legal authority for that statement.

At the conclusion of the October 10, 2019, conversation, both sides were given the opportunity to submit further argument.

On October 16, 2019, the Department submitted the "Respondent's Supplemental Brief in Response to the Court's Questions." In summary, the Department first repeats its position that Mr. Schottler's request for judicial review is untimely, asserts that the term "ordered" in Wis. Stat. Sec. 343.25(7) does not require a court order, and advised where documents were located in the record.

On October 17, 2019, Mr. Schottler filed a document titled "Judicial request for document by Oct 21<sup>st</sup>," which, in summary, recognized that the Department's action was a cancellation and not a revocation of his driver's license, acknowledges (on page 7) that "apparently the Secretary can issue an

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'order,'" that the order "MUST BE SIGNED BY THE Secretary of the department of Transportation" (page 27). and that the cancellation was not legal as there was no "Order under 343.16 or 343.32(2)" which he failed to comply with.

On October 21, 2019, Mr. Schottler filed a document titled "Typographical Error Correction to document," which made corrections to the document Mr. Schottler submitted on October 17, 2019.

On November 13, 2019, Mr. Schottler submitted a document titled "Seeking permission to respond to opposing counsel's," and in this document, among other things, states on page 13 that "The word ordered in 343.25(7) is a court order," states on page 15 that "343.16(5)(a) does not apply," and that the cancellation was not valid

## LEGAL AUTHORITY

### I. STATUTES

#### A. 343.16. Examination of applicants; reexamination of licensed persons

(5) Medical or other special examinations. (a) The secretary may require any applicant for a license or any licensed operator to submit to a special examination by such persons or agencies as the secretary may direct to determine incompetency, physical or mental disability, disease, or any other condition that might prevent such applicant or licensed person from exercising reasonable and ordinary control over a motor vehicle. If the department requires the applicant to submit to an examination, the applicant shall pay for the examination. If the department receives an application for a renewal or duplicate license after voluntary surrender under s. 343.265 or receives a report from a physician, physician assistant, as defined in s. 448.01(6), advanced practice nurse prescriber certified under s. 441.16(2), or optometrist under s. 146.82(3), or if the department has a report of 2 or more arrests within a one-year period for any combination of violations of s. 346.63(1) or (5) or a local ordinance in conformity with s. 346.63(1) or (5) or a law of a federally recognized American Indian tribe or band in this state in conformity with s. 346.63(1) or (5), or s. 346.63(1m), 1985 stats., or s. 346.63(2) or (6) or 940.25, or s. 940.09 where the offense involved the use of a vehicle, the department shall determine, by interview or otherwise, whether the operator should submit to an examination under this section. The examination may consist of an assessment. If the examination indicates that education or treatment for a disability, disease or condition concerning the use of alcohol, a controlled substance or a controlled substance analog is appropriate, the department may order a driver safety plan in accordance with s. 343.30(1q). If there is noncompliance with assessment or the driver safety plan, the department shall revoke the person's operating privilege in the manner specified in s. 343.30(1q)(d).

(b) Whenever the department receives the results of a special examination required under this subsection, the department shall give fair consideration to the recommendation of the examining person

or agency together with other evidence in determining if it is in the interest of public safety to issue, renew, deny or cancel a license. If a license is denied or canceled by the department after a special examination as provided in par. (a), such denial or cancellation shall be reviewed by a reviewing board upon written request of the applicant filed with the department within 10 days after receipt of notice of such denial or cancellation. Notice of denial or cancellation shall be in writing and contain specific reasons. The notice shall contain a statement that the applicant has 10 days within which to file a written request with the department for review of the department's decision by the reviewing board. The applicant shall have the right to appear personally before the review board, to present witnesses and additional information, and to be represented by counsel. The department's representative may administer oaths, issue subpoenas for the attendance of witnesses and the production of relevant documents and may require a reexamination of the applicant. No law enforcement officer or other witness produced by the applicant to testify on the applicant's behalf shall be paid a witness fee nor shall any law enforcement officer called to appear for the department be paid any witness fee. A record including the recommendations of the board shall be made of the proceeding. If a license is denied or canceled, the applicant shall be given specific reasons in writing. Review boards shall consist of the department's representative and at least 2 members appointed by the secretary from a list of physicians licensed to practice medicine in this state and a list of optometrists licensed to practice optometry in this state. Optometrists shall be limited to reviewing cases concerning vision only. In cases concerning mental disability or disease at least one of the physicians shall have specialized training in psychiatry. In cases concerning seizure disorders at least one of the physicians shall have specialized training in neurology. The members of the board shall receive the per diem and expenses provided in s. 15.08(7) which shall be charged to the appropriation under s. 20.395(5)(c). A decision of the department based on the recommendation of a reviewing board is subject to judicial review under s. 343.40.

(c) All reports, records or information furnished by or on behalf of an applicant or licensed operator under this subsection are confidential and shall be for the sole use of the department, the applicant or licensed driver, the review board and the courts in administering this section and are not admissible as evidence for any other purpose in any civil or criminal action. The applicant or licensed driver may give informed written consent for release of this information to others.

(d) Nothing in this subsection shall be interpreted to require the release of this information which was obtained under a pledge of confidentiality and such a clear pledge was made in order to obtain the information and was necessary to obtain the information.

#### **B. 343.25. Cancellation of licenses**

The secretary shall cancel a license:

(1) Whenever the secretary determines that the license or endorsement was issued upon an application which contains a false statement as to any material matter; or

(2) Within 10 days after receiving a written request from a person who signed the application of a person under 18 years of age, or a notice of cancellation or termination of insurance, as provided in s. 343.15; or

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(3) When the license is held by a person under 18 years of age and the secretary receives satisfactory evidence of the death of the adult who signed the application for the license; or

(4) When the person holding the license falls into one of the classes of persons to whom the law prohibits issuance of a license or a particular endorsement; or

(5) Whenever the secretary determines that a person has secured a license or endorsement, or attempted to secure a license or endorsement, by hiring or permitting another to appear in the person's place to take an examination or otherwise gaining or attempting to gain a passing score on an examination by fraud or otherwise obtain a commercial license or endorsement by fraud; or

(6) Whenever the secretary determines that a license has been altered and returned for cancellation under s. 343.43(2); or

(7) When a person who has been ordered to submit to an examination under s. 343.16 or to appear for either group or individual counseling or examination under s. 343.32(2) fails or refuses to do so. Such cancellation shall continue until compliance with the order has been made or the order is rescinded.

**C. 343.30. Suspension and revocation by the courts**

(1q)(a) If a person is convicted under s. 346.63(1) or a local ordinance in conformity therewith, the court shall proceed under this subsection. If a person is convicted under s. 346.63(2) or 940.25, or s. 940.09 where the offense involved the use of a vehicle, the court shall proceed under pars. (c) and (d). If a person is referred by the department acting under s. 343.16(5)(a), the department shall proceed under pars. (c) and (d) without the order of the court.

(c)1. Except as provided in subd. 1. a., b., or d., the court shall order the person to submit to and comply with an assessment by an approved public treatment facility as defined in s. 51.45(2)(c) for examination of the person's use of alcohol, controlled substances or controlled substance analogs and development of a driver safety plan for the person. The court shall notify the department of transportation of the assessment order. The court shall notify the person that noncompliance with assessment or the driver safety plan will result in revocation of the person's operating privilege until the person is in compliance. The assessment order shall:

a. If the person is a resident, refer the person to an approved public treatment facility in the county in which the person resides. The facility named in the order may provide for assessment of the person in another approved public treatment facility. The order shall provide that if the person is temporarily residing in another state, the facility named in the order may refer the person to an appropriate treatment facility in that state for assessment and development of a driver safety plan for the person satisfying the requirements of that state.

b. If the person is a nonresident, refer the person to an approved public treatment facility in this state. The order shall provide that the facility named in the order may refer the person to an appropriate treatment facility in the state in which the person resides for assessment and development of a driver safety plan for the person satisfying the requirements of that state.

c. Require a person who is referred to a treatment facility in another state under subd. 1.a or b to furnish the department written verification of his or her compliance from the agency which administers the assessment and driver safety plan program. The person shall provide initial verification of compliance within 60 days after the date of his or her conviction. The requirement to furnish verification of compliance may be satisfied by receipt by the department of such verification from the agency which administers the assessment and driver safety plan program.

d. Include a statement that if the person is a member or the relative of a member of a federally recognized American Indian tribe or band, the person may receive the assessment required under this subdivision from an approved tribal treatment facility as defined in s. 51.01(2c).

1m. The person may voluntarily submit to an assessment by an approved public treatment facility, as defined in s. 51.45(2)(c), and driver safety plan under this paragraph before the conviction. A prosecutor may not use that voluntary submission to justify a reduction in the charge made against the person. Upon notification of the person's submission to the voluntary assessment and driver safety plan, the court may take that voluntary submission into account when determining the person's sentence, and shall suspend the order to submit to assessment pending the person's completion of the voluntary assessment and driver safety plan.

2. The department of health services shall establish standards for assessment procedures and the driver safety plan programs by rule. The department of health services shall establish by rule conflict of interest guidelines for providers. The conflict of interest guidelines may not preclude an approved tribal treatment facility, as defined in s. 51.01(2c), from conducting assessments and providing treatment under this subsection.

3. Prior to developing a plan which specifies treatment, the facility shall make a finding that treatment is necessary and appropriate services are available. The facility shall submit a report of the assessment and the driver safety plan within 14 days to the county department under s. 51.42, the plan provider, the department of transportation and the person, except that upon request by the facility and the person, the county department may extend the period for assessment for not more than 20 additional workdays. The county department shall notify the department of transportation regarding any such extension.

(d)1. The assessment report shall order compliance with a driver safety plan. The report shall inform the person of the fee provisions under s. 46.03(18)(f). The driver safety plan may include a component that makes the person aware of the effect of his or her offense on a victim and a victim's family. The driver safety plan may include treatment for the person's misuse, abuse or dependence on alcohol, controlled substances or controlled substance analogs, or attendance at a school under s. 345.60, or both. If the plan requires treatment at an approved tribal treatment facility, as defined in s. 51.01(2c), the plan may include traditional tribal treatment modes. If the plan requires inpatient treatment, the treatment shall not exceed 30 days. A driver safety plan under this paragraph shall include a termination date consistent with the plan which shall not extend beyond one year.

2. The county department under s. 51.42 or approved tribal treatment facility under s. 51.45(7)(h) shall assure notification of the department of transportation, in a manner prescribed by the department, and the person of the person's compliance or noncompliance with assessment and with treatment. The school under s. 345.60 shall notify the department, the county department under s. 51.42, and the person of the

person's compliance or noncompliance with the requirements of the school. Nonpayment of the assessment fee or, if the person has the ability to pay, nonpayment of the driver safety plan fee is noncompliance with the court order. If the department is notified of any noncompliance, other than for nonpayment of the assessment fee or driver safety plan fee, it shall revoke the person's operating privilege until the county department under s. 51.42, the approved tribal treatment facility under s. 51.45(7)(h), or the school under s. 345.60 notifies the department that the person is in compliance with assessment or the driver safety plan. If the department is notified that a person has not paid the assessment fee, or that a person with the ability to pay has not paid the driver safety plan fee, the department shall suspend the person's operating privilege for a period of 2 years or until it receives notice that the person has paid the fee, whichever occurs first.

3. The department shall notify the person of the suspension or revocation under subd. 2., the reason for the suspension or revocation and the person's right to a review. A person may request a review of a revocation based upon failure to comply with a driver safety plan within 10 days of notification. The review shall be handled by the subunit of the department of transportation designated by the secretary. The issues at the review are limited to whether the driver safety plan, if challenged, is appropriate and whether the person is in compliance with the assessment order or the driver safety plan. The review shall be conducted within 10 days after a request is received. If the driver safety plan is determined to be inappropriate, the department shall order a reassessment and, if the person is otherwise eligible, the department shall reinstate the person's operating privilege. If the person is determined to be in compliance with the assessment or driver safety plan, and if the person is otherwise eligible, the department shall reinstate the person's operating privilege. If there is no decision within the 10-day period, the department shall issue an order reinstating the person's operating privilege until the review is completed, unless the delay is at the request of the person seeking the review.

**D. 343.40. Judicial review of suspension, revocation, cancellation or denial of license**

The denial or cancellation of a license or the revocation or suspension of an operating privilege is subject to judicial review in the manner provided in ch. 227 for the review of administrative decisions.

**E. 227.53. Parties and proceedings for review**

(1) Except as otherwise specifically provided by law, any person aggrieved by a decision specified in s. 227.52 shall be entitled to judicial review of the decision as provided in this chapter and subject to all of the following procedural requirements:

(a). Proceedings for review shall be instituted by serving a petition therefor personally or by certified mail upon the agency or one of its officials, and filing the petition in the office of the clerk of circuit court for the county where the judicial review proceedings are to be held. If the agency whose decision is sought to be reviewed is the tax appeals commission, the banking institutions review board, or the credit union review board, the petition shall be served upon both the agency whose decision is sought to be reviewed and the corresponding named respondent, as specified under par. (b)1. to 4.

2. Unless a rehearing is requested under s. 227.49, petitions for review of contested cases shall be served and filed within 30 days after the service of the decision of the agency upon all parties under s. 227.48. If a rehearing is requested under s. 227.49, any party desiring judicial review under this subdivision shall

serve and file a petition for review within 30 days after service of the order finally disposing of the application for rehearing, or within 30 days after the final disposition by operation of law of any such application for rehearing. The 30-day period for serving and filing a petition under this subdivision commences on the day after personal service or mailing of the decision by the agency.

## II. CASE LAW

### A. **Kegonsa Joint Sanitary Dist. v. City of Stoughton**, 87 Wis.2d 131 274 N.W.2d 598 (1979)

In this case the Wisconsin Supreme Court referenced Wis. Stat. Sec. 227.16 (1976) which was the predecessor to current Wis. Stat. Sec. 227.53, and which stated:

227.16 Parties and proceedings for review. (1) Except as otherwise specifically provided by law, any person aggrieved by a decision specified in s. 227.15 shall be entitled to judicial review thereof as provided in this chapter.

(a) Proceedings for review shall be instituted by serving a petition therefor personally or by registered mail upon the agency or one of its officials, and by filing such petition in the office of the clerk of the circuit court for the county where the trial shall be held . . . all within 30 days after the service of the decision of the agency upon all parties . . . .”

and declared on pages 149 to 150 of its decision:

Sec. 227.16, quoted above, requires that proceedings for administrative review be instituted within thirty days after service of the decision in question on the parties. Failure to comply is fatal; it requires dismissal for lack of subject matter jurisdiction.

### B. **Sunnyview Village, Inc. v. Administration Dept.**, 108 Wis. 396, 311 N.W.2d 632 (1981)

In this case the Wisconsin Supreme Court repeated that it is crucial that persons seeking judicial review serve the agency within the time limit, stating on page 399:

failure to serve the agency within the time period set forth in sec. 227.16 deprives the circuit court of jurisdiction. See *Ryan v. Department of Revenue*, 68 Wis.2d 467, 472, 228 N.W.2d 357, 359 (1975); *Cudahy v. Department of Revenue*, 66 Wis.2d 253, 259, 224 N.W.2d 570 (1974); *Bracht v. Department of Revenue*, 48 Wis.2d 184, 187, 179 N.W.2d 921 (1970); *Monahan v. Department of Taxation*, 22 Wis.2d 164, 167, 125 N.W.2d 331 (1963).

### C. **Currier v. Wisconsin Department of Revenue**, 2006 WI App 12, 288 Wis.2d 693, 709 N.W.2d 520)

In this case the Wisconsin Court of Appeals interpreted Wis. Stat. Sec.227.53(1)(a)2 and the necessity of complying with statutory time requirements, stating at page 706:

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¶ 22 Since Currier's petition for rehearing was not timely filed, rehearing was not properly "requested under W.S.A. § 227.49." See Wis. Stat. § 227.53(1)(a)2. Currier was therefore required to file his petition for circuit court review within thirty days service of the Commission's original adverse decision. The Commission served its original decision on June 16 and Currier did not file his petition until August 11, clearly outside the confines of the thirty-day period.

¶ 23 We appreciate the consequences to Currier of our decision. "To dismiss an appeal because it comes one day late may seem harsh. However, if statutory time limits to obtain appellate jurisdiction are to be meaningful they must be unbending." *Ryan v. DOR*, 68 Wis.2d 467, 472, 228 N.W.2d 357 (1975) (citation omitted). Strict compliance with the statutes is required. *Bracht v. DOR*, 48 Wis.2d 184, 187-88, 179 N.W.2d 921 (1970) (holding that timely service is indispensable to trigger judicial review of the Commission's decision); *Ryan*, 68 Wis.2d at 472, 228 N.W.2d 357. Because Currier did not timely file his petition for rehearing with the Commission, his petition for review with the circuit court was also untimely. The circuit court, therefore, lacked competency to proceed and we affirm its order dismissing the petition. See *Johnsonville Sausage, Inc. v. DOR*, 113 Wis.2d 7, 9, 11, 334 N.W.2d 269 (Ct.App.1983) (failure to comply with mandatory time limits results in loss of circuit court's competency to proceed).

#### ANALYSIS

As the number of filings in this case would reflect, the documentation filed in this case is voluminous, consisting of over 650 pages. Further, with the number of statutes referenced, at times the arguments were difficult to follow. However, by identifying the issues involved and reading the statutes themselves, what at one time may have appeared to be complicated, was significantly simplified.

#### I. Was the Petition for Judicial Review Timely Filed?

It is undisputed that this case is a request for judicial review under Wis. Stat. Sec. 343.40. The first page of the two documents filed by Mr. Schottler on March 11, 2019, the Petition for Judicial Review and the Jurisdictional Statement, both make specific reference to Wis. Stat. Sec. 343.40 which, again, states:

#### **343.40. Judicial review of suspension, revocation, cancellation or denial of license**

The denial or cancellation of a license or the revocation or suspension of an operating privilege is subject to judicial review in the manner provided in ch. 227 for the review of administrative decisions.

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Since the letter of April 11, 2014 (DOT record page 294), advised Mr. Schottler that his regular license is cancelled indefinitely. Mr. Schottler clearly was able seek judicial review under Wis. Stat. Sec. 343.40. Further, the back of the April 11, 2014, letter states:

**Judicial Review**

You may seek review of this decision as provided under Section 343.40, Wisconsin Statutes. To do this you will need to know how to file a Petition for Judicial Review (a type of summons and complaint). If you do not know how to write and serve the Petition for Judicial Review we suggest you seek the advice of an attorney. The petition must be filed with the clerk of circuit court in the county in which you live, AND the petition must be served upon the Department of Transportation. The Department must receive their copy of the petition for Judicial Review WITHIN 30 DAYS FROM THE DATE OF THIS LETTER.

As Wis. Stat. Sec. 343.40 notes, the judicial review is "in the manner provided in ch. 227 for the review of administrative decisions." The Department takes the position that Mr. Schottler's request for judicial must comply with the requirements of Wis Stat. Sec. 227.53(1)(a) 2, which states:

**E. 227.53. Parties and proceedings for review**

(1) Except as otherwise specifically provided by law, any person aggrieved by a decision specified in s. 227.52 shall be entitled to judicial review of the decision as provided in this chapter and subject to all of the following procedural requirements:

(a)1. Proceedings for review shall be instituted by serving a petition therefor personally or by certified mail upon the agency or one of its officials, and filing the petition in the office of the clerk of circuit court for the county where the judicial review proceedings are to be held. If the agency whose decision is sought to be reviewed is the tax appeals commission, the banking institutions review board, or the credit union review board, the petition shall be served upon both the agency whose decision is sought to be reviewed and the corresponding named respondent, as specified under par. (b)1. to 4.

2. Unless a rehearing is requested under s. 227.49, petitions for review of contested cases shall be served and filed within 30 days after the service of the decision of the agency upon all parties under s. 227.48. If a rehearing is requested under s. 227.49, any party desiring judicial review under this subdivision shall serve and file a petition for review within 30 days after service of the order finally disposing of the application for rehearing, or within 30 days after the final disposition by operation of law of any such application for rehearing. The 30-day period for serving and filing a petition under this subdivision commences on the day after personal service or mailing of the decision by the agency.

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No issue has been raised under Wis. Stat. Sec. 227.53(1)(a) about the service on the Department. The claim asserted by the Department its Motion to Dismiss is that Mr. Schottler did not timely file his Petition for Judicial Review under the requirements of Wis. Stat. Sec. 227.53(1)(a)2. Therefore, clearly the narrow issue to be decided is whether Mr. Schottler served and filed his Petition for Review within “30 days after the service of the decision of the agency.” Under Wis. Stat. Sec. 227.53(1)(a)2, the 30 day time limit for the serving and filing of a petition for judicial review commences “on the day after personal service or mailing of the decision by the agency.”

It is undisputed that the Department notified Mr. Schottler by letter dated April 11, 2014, that his driver’s license had been cancelled. The back of that letter (DOT record page 295) clearly advised Mr. Schottler that he had 30 days from the date of that letter to properly seek judicial review. As this matter was filed March 11, 2019, that is well beyond the statutory requirement. Under Wis. Stat. Sec. 227.53(1)(a)2, as well as the case law cited on pages 10 and 11 hereof, due to the failure to serve and file this action within the 30 day statutory requirement mandates that this action be dismissed.

This Court recognizes that one of the arguments of Mr. Schottler is that he was not aware of the reason for the cancellation until July 10, 2017 (see Judicial request for document by Oct 21<sup>st</sup>, filed October 17, 2019, page 16). However, the statute specifically refers to the date of “personal service or mailing of the decision,” not the date someone is aware of the reason for the agency’s decision.

**II. Did the Department letter of March 12, 2014 constitute an order under Wis. Stat. Sec. 343.25(7)?**

Since this Court has already concluded that this matter must be dismissed, while there is no requirement that other issues be decided, for sake of clarity, this Court will reference the other issues.

Wis. Stat. Sec. 343.25(7) states:

The secretary shall cancel a license:

.....

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(7) When a person who has been ordered to submit to an examination under s. 343.16 or to appear for either group or individual counseling or examination under s. 343.32(2) fails or refuses to do so. Such cancellation shall continue until compliance with the order has been made or the order is rescinded.

At the hearing on October 10, 2019, this Court asked the questions of whether the term "ordered" in this subsection is defined anywhere and if the Department took the position that the letter of March 12, 2014, constituted an order under Wis. Stat. Sec. 343.25(7).

While generally a reference to an order brings to mind orders made by a court, there is nothing in this subdivision that requires an order of a court. In fact, are other state statutes that specifically define orders as a directive of a department, such as:

#### **101.01. Definitions**

In this chapter, the following words and phrases have the designated meanings unless a different meaning is expressly provided:

...

(9) "Order" means any decision, rule, regulation, direction, requirement or standard of the department, or any other determination arrived at or decision made by the department.

#### **102.01. Definitions**

(2) In this chapter:

....

(dm) "Order" means any decision, rule, regulation, direction, requirement, or standard of the department or the division, or any other determination arrived at or decision made by the department or the division.

#### **103.001. Definitions**

In chs. 103 to 106, the following words and phrases have the designated meanings unless a different meaning is expressly provided:

(11) "Order" means any decision, rule, regulation, direction, requirement or standard of the department, or any other determination arrived at or decision made by the department.

Thus, while not the best worded statute, this Court concludes that a common sense meaning of the term "ordered" under Wis. Stat. Sec. 343.25(7) means any decision, rule, regulation, direction, requirement or standard of the Department, or any other determination arrived at or decision made by the Department.

**III. Does there need to be a "case number" or "conviction" in order for the Department to Invoke Wis. Stat. Sec. 343.25(7)?**

There were a number of references to parts of Wis. Stat. Sec. 343.30 made by Mr. Schottler. However, as was noted by this Court on October 10, 2019, that applies to cases of suspension or revocation of a driver's license and, therefore, is not applicable to this case.

Mr. Schottler also argued that Wis. Stat. Sec. 343.16(5) required a conviction and/or case number in order to be used by the Secretary. That subsection states:

**A. 343.16. Examination of applicants; reexamination of licensed persons**

(5) Medical or other special examinations. (a) The secretary may require any applicant for a license or any licensed operator to submit to a special examination by such persons or agencies as the secretary may direct to determine incompetency, physical or mental disability, disease, or any other condition that might prevent such applicant or licensed person from exercising reasonable and ordinary control over a motor vehicle. If the department requires the applicant to submit to an examination, the applicant shall pay for the examination. If the department receives an application for a renewal or duplicate license after voluntary surrender under s. 343.265 or receives a report from a physician, physician assistant, as defined in s. 448.01(6), advanced practice nurse prescriber certified under s. 441.16(2), or optometrist under s. 146.82(3), or if the department has a report of 2 or more arrests within a one-year period for any combination of violations of s. 346.63(1) or (5) or a local ordinance in conformity with s. 346.63(1) or (5) or a law of a federally recognized American Indian tribe or band in this state in conformity with s. 346.63(1) or (5), or s. 346.63(1m), 1985 stats., or s. 346.63(2) or (6) or 940.25, or s. 940.09 where the offense involved the use of a vehicle, the department shall determine, by interview or otherwise, whether the operator should submit to an examination under this section. The examination may consist of an assessment. If the examination indicates that education or treatment for a disability, disease or condition concerning the use of alcohol, a controlled substance or a controlled substance analog is appropriate, the department may order a driver safety plan in accordance with s. 343.30(1q). If there is noncompliance with assessment or the driver safety plan, the department shall revoke the person's operating privilege in the manner specified in s. 343.30(1q)(d).

(b) Whenever the department receives the results of a special examination required under this subsection, the department shall give fair consideration to the recommendation of the examining person or agency together with other evidence in determining if it is in the interest of public safety to issue, renew, deny or cancel a license. If a license is denied or canceled by the department after a special examination as provided in par. (a), such denial or cancellation shall be reviewed by a reviewing board upon written request of the applicant filed with the department within 10 days after receipt of notice of such denial or cancellation. Notice of denial or cancellation shall be in writing and contain specific reasons. The notice shall contain a statement that the applicant has 10 days within which to file a written request with the department for review of the department's decision by the reviewing board. The applicant shall have the right to appear personally before the review board, to present witnesses and additional information, and to be represented by counsel. The department's representative may administer oaths, issue subpoenas for the attendance of witnesses and the production of relevant documents and may require a reexamination of the applicant. No law enforcement officer or other witness produced by the applicant to testify on the applicant's behalf shall be paid a witness fee nor shall any law enforcement officer called to appear for the department be paid any witness fee. A record including the recommendations of the board shall be made of the proceeding. If a license is denied or canceled, the applicant shall be given specific reasons in writing. Review boards shall consist of the department's representative and at least 2 members appointed by the secretary from a list of physicians licensed to practice medicine in this state and a list of optometrists licensed to practice optometry in this state. Optometrists shall be limited to reviewing cases concerning vision only. In cases concerning mental disability or disease at least one of the physicians shall have specialized training in psychiatry. In cases concerning seizure disorders at least one of the physicians shall have specialized training in neurology. The members of the board shall receive the per diem and expenses provided in s. 15.08(7) which shall be charged to the appropriation under s. 20.395(5)(cq). A decision of the department based on the recommendation of a reviewing board is subject to judicial review under s. 343.40.

(c) All reports, records or information furnished by or on behalf of an applicant or licensed operator under this subsection are confidential and shall be for the sole use of the department, the applicant or licensed driver, the review board and the courts in administering this section and are not admissible as evidence for any other purpose in any civil or criminal action. The applicant or licensed driver may give informed written consent for release of this information to others.

(d) Nothing in this subsection shall be interpreted to require the release of this information which was obtained under a pledge of confidentiality and such a clear pledge was made in order to obtain the information and was necessary to obtain the information.

This Court concludes that there are a number of reasons that the secretary may require an examination. One reason is set forth in the first five lines of Wis. Stat. Sec. 343.16(5), which is when the secretary requires a currently licensed operator to submit to a special examination to "determine incompetency, physical or mental disability, disease, or any other condition that might prevent such

applicant or licensed person from exercising reasonable and ordinary control over a motor vehicle.”

That reason is separate from other reasons listed under Wis. Stat. Sec. 343.16(5).

Therefore, this Court concludes that there is no requirement that there first be a case number or a conviction in order for the secretary to require a special examination.

#### **IV. Can this request for judicial review include other claims?**

As noted, this case is one in which Mr. Schottler requests a judicial review under Wis. Stat. Sec. 343.40, which again states:

343.40. Judicial review of suspension, revocation, cancellation or denial of license

The denial or cancellation of a license or the revocation or suspension of an operating privilege is subject to judicial review in the manner provided in ch. 227 for the review of administrative decisions.

This Court, by the clear terms of that statute, is limited to “judicial review in the manner provided in ch. 227 for the review of administrative decisions.” All other claims go beyond that limitation and must be dismissed.

#### **V. Further claims and arguments**

This Court recognizes that Mr. Schottler made other arguments pertaining to the cancellation of his license, including a request for hearing and that the letters of March 12 and April 11, 2014, should have been signed by the secretary. Further, this Court recognizes that Mr. Schottler is very passionate about his belief that his driver’s license was wrongfully cancelled. Finally, this Court recognizes that dismissal may be a harsh ending to this proceeding. However, as noted, both the Wisconsin Supreme Court and the Wisconsin Court of Appeals have clearly declared that the time limits for seeking judicial review are mandatory, and, if not complied with, this Court is required to follow the mandates of the Wisconsin Supreme Court and the Wisconsin Court of Appeals, and dismiss these proceedings.

**DECISION AND ORDER**

For the reasons set forth herein, IT IS HEREBY ORDERED, that the Department's Motion to Dismiss is hereby granted and this case is dismissed.

THIS ORDER CONSTITUTES A FINAL ORDER FOR PURPOSES OF APPEAL.

Dated this 9<sup>th</sup> day of April, 2020.

E: Respondent

C: Petitioner

Pages 6 and 7 from the transcript of hearing held May 14<sup>th</sup>, 2020

23 THE COURT: If I could just mention  
24 two things, I'll let Mr. Schottler respond. I think  
25 first of all, gentlemen, on this question about

6

2 whether or not he constituted an order, I think we can  
3 agree that I'm not aware of any law on that. And,  
4 that's why I kept asking the question because there  
5 isn't any law on that. I couldn't find any. And I made  
6 my decision based upon how I interpreted the statute.  
7 I realize Mr. Schottler disagrees with that, but I  
8 don't think there's any law on that in which Mr.  
9 Schottler has pointed out I misinterpreted. And I'm  
10 not suggesting that's -- that he did something wrong.  
11 It's just that that to me is an issue that if the  
12 Court of Appeals wants to rule on that, that'd be  
great because we don't have any law.



### Wisconsin Department of Transportation

wisconsin.dmv.gov

7573 7:2011 Ch 343 Wis Stats

DIVISION OF MOTOR VEHICLES  
PO Box 7983  
Madison, WI 53707-7983

Telephone: 608-266-2281  
FAX: 608-267-3812  
E-mail: dmvrecords.dmv@dot.wi.gov

March 6, 2019

PATRICK J SCHOTTLER

DTTOM

Reinstatement eligibility applies to the following as of 03-06-2019 12:41PM  
Regular Class: A, B, C, D Endorsement: N

As your record now appears, you are **NOT ELIGIBLE** for reinstatement of your driving privilege.

Use our online services at [wisconsin.dmv.gov/reinstate](http://wisconsin.dmv.gov/reinstate) to confirm your eligibility and reinstate your driving privilege. If you are not eligible to reinstate online, go to any DMV Service Center, except express offices, on or after the date you are eligible to reinstate. See [wisconsin.dmv.gov](http://wisconsin.dmv.gov) for a list of Service Centers.

*last* You may become eligible for reinstatement **IMMEDIATELY**

Your Federal Medical Examiner Certification (Fed Med card) has expired. A Fed Med card is required for the current tier you have on file with the DMV. Please visit a DMV Customer Service Center and provide your updated Fed Med card or new tier certification. Hours and locations can be found at: [wisconsin.dmv.gov](http://wisconsin.dmv.gov).

*Birth cert.*

- Document scans may be required.
- If you are not eligible to reinstate online, you must appear at a DMV Service Center, except express offices, to reinstate. Take all required documents with you. For a list of DMV Service Centers, visit [wisconsin.dmv.gov](http://wisconsin.dmv.gov).

You have additional requirements for reinstatement. Prior to visiting a DMV Service Center, please contact the Qualifications & Issuance Section at (608) 266-2327 or email to: [dre.dmv@dot.wi.gov](mailto:dre.dmv@dot.wi.gov) for more information.

Driver Information Section

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684434



Division of Motor Vehicles  
Medical Review Unit  
PO Box 7918  
Madison, WI 53707-7918

Internet: [www.dmv.wisconsin.gov](http://www.dmv.wisconsin.gov)  
Facsimile (FAX): 608-267-0518  
E-mail: [dms.dmv@dot.wi.gov](mailto:dms.dmv@dot.wi.gov)

---

March 12, 2014

PATRICK J SCHOTTLER  
1479 160TH ST  
NEW RICHMOND WI 54017

**TELEPHONE**  
(608) 266-2327  
DL#: S346-6706-3150-05

We received information that causes us to question your ability to safely operate a motor vehicle. To determine whether we can continue to license you, the following is required.

Have your physician (MD/DO), physician assistant (PA-C) or advanced practice nurse prescriber (APNP) complete the appropriate sections on the enclosed medical form. Information in the report must be based on an examination conducted within the last 3 months.

To avoid cancellation of your license, return the completed form(s) within 30 days from the date of this letter.

Even if the form indicates that you meet the medical standards for licensing, you may still be required to complete a re-examination of your driving abilities. We will make that determination only after we receive the completed medical form.

After we review the form(s), we will contact you only if we need more information, determine that you must re-test, or find that if you are not eligible for continued licensing.

If you are unable to meet our request, please refer to the enclosed information on Voluntary Temporary Surrender of License (VTS).

Medical Review Unit  
Bureau of Driver Services  
ditcjp  
Enclosures



Wisconsin Department of Transportation

April 11, 2014

PATRICK J SCHOTTLER  
1478 180TH ST  
NEW RICHMOND, WI 54017

Division of Motor Vehicles  
Medical Review Unit  
4800 Shakespeare Avenue  
PO Box 7918  
Madison, WI 53707-7918

Telephone: 608-266-2327  
Teleprinter (TTY): 608-266-0388  
Fax: 608-267-0516  
Email: dm.dmv@dot.wis.gov

Driver ID No. 8348-8708-0180-06  
File No. C290214

COMM 4993-614-1017

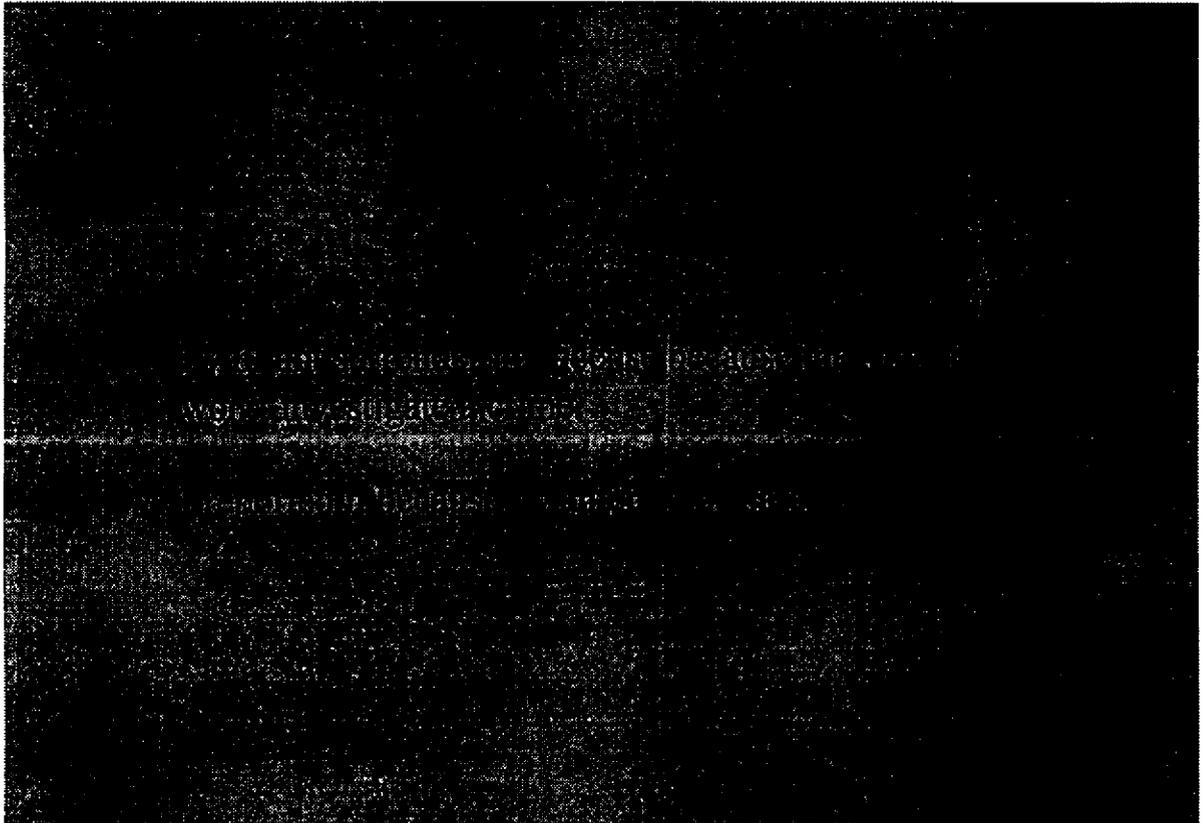
The following is cancelled:

- Affected License(s): License Type REGULAR Class A,B,C,D Endorsement N
- Effective: April 11, 2014
- Time Period: Indefinite
- Reason: Failure to submit required information
  - Condition: Mental Emotional Trans 112.12
  - Condition: Sleep Disorder Trans 112.07
- In Accordance with:
  - WI Statute(s): 343.25(7)

To cancel a license under 343.25 (7) It must be done because of 343.16 (5) which requires the cancelation to be done in the manner specified under 343.30 (1q)(d)(2), which cancelation can then continue until compliance with the order.

If you don't understand That is what this case is about.

(DC 4, PG328) DOCUMENT 4 PAGE 328 TIME STAMP IS NEARLY GRAYED OUT.



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May 27, 2016 9:18AM HD01 HUDSON No. 5320 P. 9

This report must be based on an examination conducted WITHIN THE PAST 90 DAYS or other \_\_\_\_\_  
 The Secretary of the Department of Transportation is, by statute, responsible for the driver licensing decision. Your report will be advisory in determining eligibility. Health Care Professional's signature AND ALL recommendations (Section 6) are required for ALL applicants.

YES NO

1. In your opinion, is this person medically safe to operate a motor vehicle?

2. In your opinion, is this person medically safe to operate a commercial motor vehicle?

3. In your opinion, is this person medically safe to operate a bus and/or school bus?

4. If YES to Question #1 above:  
 Do you recommend a complete re-examination of this patient's driving ability (knowledge, signs and skills test)?

5. If applicable, I reviewed the attached Driver Condition or Behavior Report.

6. Recommended Restrictions:

Continuous Oxygen Use Required

Daylight Driving Only

Drive only \_\_\_\_\_ miles from home

Other \_\_\_\_\_

7. Do you recommend any additional medical evaluation?

*no other study needed because DMV order*

---

I certify that I have examined this patient. My specialty is \_\_\_\_\_

Signature of Health Care Professional <i>David DeGear</i>	<input checked="" type="checkbox"/> MD <input type="checkbox"/> PA-C <input type="checkbox"/> DO <input type="checkbox"/> NP	Patient Identification Date <i>2/5/2015</i>
X Signature of Reporting Health Care Professional <i>[Signature]</i>	Professional License Number <i>27539</i>	Phone Number <i>715 242-2300</i>

Approved by Chapter 48.01, Wis. Statute and Title Ch. 112.02, Wis. Admin. Code, this form must be signed by an MD, DO, PA-C or NP.

PAGE 0/0 REC'D 6/27/2016 8:17:52 AM [Central Day

Many interesting notes about this page:

1. It is dated 2-5-2015 This is the doctor there referencing as legal authority to declare a psychological and neurological examination is needed. After he signed it.
2. This note is signed by Doctor DeGear, I am okay to drive under his opinion on this date, Feb.- 5 - 2015 (((per DMV order. ))) (THE DMV are NOT DOCTORS)
3. You will find when Governor Walkers office asked for a response from the DMV. They responded to him. that I needed to have this form filled out. You can see it was filled out and signed. THEY LIED TO GOVERNOR SCOTT WALKERS OFFICE.
4. After this form was filled out they contacted the hospital to request doctor DeGear to recommend a psychological review and neurological review. After he signed it.

In Doctor DeGears opinion on this date I was okay to drive. 2 - 5 - 2015.

**Seeking leave of the court to file these orders.**

**Orders I am seeking View laws video on USB  
drive**

A person must be ordered by a court to a 51.42 or 51.45 (7)(h) or 345.60 for anyone to cancel a license under any circumstances resulting from or out of action under 343.25 (7) or sub 343.16 (5)

NO license can be canceled under 343.25 (7) from that statute alone. The license must have been cancelled under 343.16 or 343.32 (2) for a license to continue to be cancelled under 343.25 (7)

Any documents requesting or requiring any examinations under 343.25 (7) or 343.16 must be signed by the secretary of transportation, as the law calls out, "The secretary may require" there are to be "NO" anonymous documents sent out from the Department of Transportation. Or agency's which reside with in it. Requesting reviews evaluations or canceling licenses.

No drivers license can be cancelled with out a case number. With out due process of law where the driver can confront the witnesses against him.

No drivers license can be cancelled with out Due Process of law under constitutional rights United States V, and VI amendments.

An anonymous person can not cancel any ones drivers license under any circumstances. (The secretary may)

If the department attempts to cancel a license under 343.16 (5), 343.30 (1q)(d)(2) for failure to be assessed by a psychologist or psychiatrist. Statute 51.20 (3) applies.

I would like these orders to be printed in the law books them selves. To guide attorneys and defendants. In Illegal department of transportation orders or cancelations.



The respondents' responses to the petitioner's arguments are as follows:

**I. The petitioner is not entitled to a hearing under Wis. Stat. § 227.42.**

The basic facts regarding the respondents' cancellation of the petitioner's operator's license are not in dispute. The petitioner received a letter from DOT on March 12, 2014, informing him that the agency had received information that called into question the petitioner's ability to safely operate a motor vehicle. The letter advised him that, in order to avoid cancellation of his license, he needed to undergo a special medical examination and submit certain medical forms to DOT within 30 days. The respondent did not submit such forms to DOT within 30 days, whereupon the agency cancelled his operator's license pursuant to its authority to do so under Wis. Stat. § 343.25(7) via a notice dated April 11, 2014.

As noted by the respondents' motion, Wis. Stat. § 343.40 states that the cancellation of an operator's license "is subject to judicial review in the manner provided in ch. 227 for the review of administrative decisions." The relevant statute (Wis. Stat. § 227.53(1)(a)2m.) provides that a petition for judicial review to challenge the agency action must be filed and served within 30 days of the agency action. The petitioner did not file or serve a petition for judicial review, so he waived his opportunity to challenge the agency's decision (*i.e.*, the notice) dated April 11, 2014. To the extent the petitioner wishes to challenge the cancellation of his license, he failed to do so in a timely manner, so this Court lacks the competency to hear such an action and it must be dismissed.

In addition, the petitioner's failure to timely pursue judicial review under Wis. Stat. § 227.52, *et seq.*, is fatal in that it was his exclusive available judicial remedy under Wisconsin law. Wisconsin Stat. ch. 227 provides "the exclusive method for judicial review of agency determinations." *Turkow v. DNR*, 216 Wis. 2d 273, 281, 576 N.W.2d 288 (Ct. App. 1998) (citing *Kosmatka v. DNR*, 77 Wis. 2d 558, 567, 253 N.W.2d 887 (1977); *Kegonsa Joint Sanitary Dist. v. City of Stoughton*, 87 Wis. 2d 131, 145-46, 274 N.W.2d 598 (1979)). "[W]here a statute relating to an administrative agency provides a direct method of judicial review of agency action, such method of review is generally regarded as exclusive, especially where the statutory remedy is plain, speedy, and adequate." *Kegonsa Joint Sanitary Dist.*, 87 Wis. 2d at 145 (citing *Underwood v. Karns*, 21 Wis. 2d 175, 179-80, 124 N.W.2d 116 (1963); *Perkins v. Peacock*, 263 Wis. 644, 58 N.W.2d 536 (1953)). Thus, a civil action challenging an administrative agency decision is properly dismissed when Chapter 227 judicial review has not been pursued. *Turkow*, 216 Wis. 2d at 283. In other words, the petitioner cannot now commence a separate civil action five years later seeking to overturn the agency's 2014 cancellation of his license.<sup>1</sup>

The petitioner's attempt to invoke Wis. Stat. § 227.42 ("Right to hearing") five years later as an end-run around the 30-day requirement of Wis. Stat. § 227.53(1)(a) is misplaced and must be rejected. He did not request a hearing at the time of the cancellation and then failed to timely file a petition for judicial review within 30 days.

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<sup>1</sup> As a practical matter, there is nothing stopping the petitioner from applying for a new license, and he may do so at any time. See Wis. Stat. § 343.26(1). Of course, it is likely that the agency will require the petitioner to submit to an examination under § 343.16.

That ship has long since sailed. Moreover, he is not entitled now to a hearing on that cancellation because, among other things, there is no dispute of material fact. The right to a hearing under Wis. Stat. § 227.42 is dependent on several elements, one of which is that there must be a dispute of material fact. Wis. Stat. § 227.42(1)(d). Here, there is no dispute of a material fact of the reason for the agency's cancellation of the petitioner's license. The agency sent him notice – that is not disputed. The petitioner did not provide the required documents within 30 days – that is not disputed. That is the ground on which DOT cancelled the petitioner's license – the failure to produce the required medical reports.

For the above-stated reasons, the petitioner's request for an order granting him a hearing under Wis. Stat. § 227.42 must be rejected.

**II. DOT properly cancelled the petitioner's operator's license under the appropriate statute – Wis. Stat. § 343.25(7).**

The petitioner's license was cancelled pursuant to the respondents' authority under Wis. Stat. § 343.25(7). The relevant portion of that statute states:

**343.25 Cancellation of licenses.** The secretary shall cancel a license:

.....

(7) When a person who has been ordered to submit to an examination under s. 343.16 or to appear for either group or individual counseling or examination under s. 343.32(2) fails or refuses to do so. Such cancellation shall continue until compliance with the order has been made or the order is rescinded.

The petitioner continually argues that the above statute was not a proper basis for cancelling his license, and he asserts that it should have been done under Wis. Stat. § 343.30(1q)(d). The petitioner is wrong. That statute references revocation (not

cancellation) and is only applicable if: (a) the person has not complied with an assessment that results from a required medical examination; or (b) if the person has not complied with a department-ordered driver safety plan. Wis. Stat. § 343.16(5). The petitioner's license was cancelled because he failed to submit the required medical documents within 30 days, not because he failed to comply with an assessment or because he failed to comply with a driver safety plan. His argument that the agency illegally cancelled his license is simply wrong and must be rejected.

**III. The petitioner is not entitled to damages from the agency.**

The provision regarding "costs" in Wis. Stat. § 227.485, to which the petitioner continually refers, means litigation costs. The petitioner is confusing this term with the "damages" (the \$300 per day) he claims he is entitled to because of the cancellation of his license. Wisconsin Statute § 227.485 ("Costs to certain prevailing parties") allows a hearing examiner to award costs to a prevailing party in a contested case hearing if the hearing examiner determines that the state agency was not substantially justified in taking its position.<sup>2</sup> Wis. Stat. § 227.485(3). The statute then directs that "The hearing examiner shall determine the amount of costs using the criteria specified in s. 814.245(5)." Wis. Stat. § 227.485(5).

Wisconsin Statute § 814.245 ("Actions by state agencies") provides authority for courts to order costs against a state agency for court proceedings under the same

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<sup>2</sup> As an initial matter, there was no contested case hearing held, so the petitioner cannot recover any costs.

criteria as Wis. Stat. § 227.485 – i.e., if the court determines that the agency was not substantially justified in its position:

**814.245 Actions by state agencies.**

.....

(3) Except as provided in s. 814.25, if an individual, a small nonprofit corporation or a small business is the prevailing party in any action by a state agency or in any proceeding for judicial review under s. 227.485(6) and submits a motion for costs under this section, the court shall award costs to the prevailing party, unless the court finds that the state agency was substantially justified in taking its position or that special circumstances exist that would make the award unjust.

The statute then goes on to specify the available “costs” to a prevailing party as follows:

(5) If the court awards costs under sub. (3), the costs shall include all of the following which are applicable:

(a) The reasonable expenses of expert witnesses, the reasonable cost of any study, analysis, engineering report, test or project which is found by the court to be necessary for the preparation of the case and reasonable attorney or agent fees.

The statutes’ reference to “costs” is clearly a reference to litigation costs. What the petitioner appears to be seeking is damages for his claimed lost income as a result of the cancellation of his license, and there is no basis in the law for a court to award such damages against the State. (See discussion of the State’s sovereign immunity in respondents’ initial brief.)

WHEREFORE, respondents respectfully ask the Court to DISMISS the petitioner’s action and to DENY all requests for relief.

Dated this 21st day of May 2019.

Respectfully submitted,

JOSHUA L. KAUL  
Wisconsin Attorney General

Electronically signed by:  
/s/ Christopher J. Blythe  
CHRISTOPHER J. BLYTHE  
Assistant Attorney General  
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September 16, 2016

Patrick J Schottler  
1479 180th St  
New Richmond, WI 54017

Mr. Schottler:

This letter is being sent in regards to the cancellation of your license by the Medical Review & Fitness Unit of the Division of Motor Vehicles ("DMV"), and your continued correspondence with DMV.

DMV has reason to believe that you have a medical condition which may affect your ability to safely operate a vehicle, and your license was cancelled due to your failure to provide requested medical information.

Your physician recommended that you have a psychological evaluation and a neurological evaluation. Please have your physician (MD/DO) or advanced practice nurse prescriber (APNP) complete a narrative summary of the results of both evaluations.

Please cease all correspondence with DMV and provide the results, and all other future communications, directly to the Wisconsin Department of Transportation's Office of General Counsel:

Office of General Counsel  
4802 Sheboygan Ave., Rm. 112B  
P.O. Box 7910  
Madison, WI 53703-7910

This information is necessary in order for DMV to determine whether you are eligible to be licensed, and a licensing decision will be made once we are in receipt of the requested documents.

Office of General Counsel  
Wisconsin Department of Transportation

Enclosure

COPY

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Document 2

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## Weapon

### Masked netting

This is a picture of a man coming out of my house. The hand is the clearest example it is not me. He is also too skinny to be me. Some people say, maybe he was just visiting.

One time I had this camera, and surveillance camera's on the drive ways. And one last little old generic trick. I had pulled a shoe behind the door as I left for church.

What do you think happened.

This camera didn't show a thing, the surveillance camera's didn't show a thing no vehicle came in the driveway. But the old shoe caught them, it was moved completely out of the arc of the door. And an inch away from where the door would have pushed it had the door moved it. Dad said maybe someone just checked to see if you were home. I said no because if they had the surveillance camera's would have picked them up and so would this camera have taken their picture.

What actually did happen the guy erased the wrong picture. He erased my picture coming out of the house. And left his. That is how I got the picture.

Note on this appendix certificate. There was no agency hearing the hearing was deemed denied under 227.42 (2) when the department did not respond after 20 days to the request for a hearing. on February 7<sup>th</sup>, 2019

I hereby certify that filed with this brief, either as a separate document ~~or as a part of this brief~~, is an appendix that complies with s. 809.19(2)(a) and that contains, a at a minimum: (1) a table of contents (2) the findings or opinion of the circuit court; and (3) portions of the record essential to an understanding of the issues raised, including oral or written rulings or decision's showing the circuit court's reasoning regarding those issues.

I further certify that if this appeal is taken from a circuit court order or judgment entered in a judicial review of an administrative decision, the appendix contains the findings of fact and conclusions of law, if any, and final decision of the administrative agency.

I further certify that if the record is required by law to be confidential, the portions of the record included in the appendix are reproduced using first names and last initials instead of full names or persons, specifically including juveniles and parents of juveniles, with a notation that the portions of the record have been so reproduced to preserve confidentiality and with appropriate references to the record

August 6<sup>th</sup>, 2020

Pat Schottler  
1479 160<sup>th</sup>, St.

New Richmond WI 54017

612 – 963 – 5547 leave a message I do not answer my phone.



I Pat Schottler certify that this document was mailed by certified mail In the United states postal service for delivery by mail with postage pre paid to:

August 6<sup>th</sup>, 2021



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