

No. A12-2307

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STATE OF MINNESOTA

IN COURT OF APPEALS

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Gary Lee Constans,

Appellant,

vs.

Commissioner of Public Safety,

Respondent.

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RESPONDENT'S BRIEF, ADDENDUM AND APPENDIX

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The appendix to this brief is not available for online viewing as specified in the *Minnesota Rules of Public Access to the Records of the Judicial Branch*, Rule 8, Subd. 2(e)(2).

## TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES .....	ii
LEGAL ISSUES .....	1
STATEMENT OF THE CASE.....	2
STATEMENT OF FACTS.....	3
ARGUMENT .....	9
I. STANDARD OF REVIEW .....	9
II. THE DISTRICT COURT CORRECTLY DETERMINED THAT RESPONDENT HAD SUFFICIENT CAUSE TO CANCEL APPELLANT’S DRIVING PRIVILEGES. ....	10
III. THE CANCELLATION AND REVIEW OF APPELLANT’S DRIVING PRIVILEGES DID NOT DEPRIVE APPELLANT OF DUE PROCESS .....	18
CONCLUSION .....	21
RESPONDENT’S ADDENDUM.....	RAD1
RESPONDENT’S APPENDIX.....	RA1

## TABLE OF AUTHORITIES

	Page
<b>STATE CASES</b>	
<i>Antl v. State, Dep't of Pub. Safety,</i> 353 N.W.2d 240 (Minn. Ct. App. 1984) .....	10
<i>Askildson v. Commissioner of Public Safety,</i> 403 N.W.2d 674 (Minn. Ct. App. 1987), <i>rev. denied</i> (Minn. May 28, 1997) .....	1, 11, 14
<i>Boeser v. Commissioner of Public Safety,</i> No. A06-2032, 2007 WL 4234550 (unpublished opinion) .....	19
<i>Busch v. Commissioner of Public Safety,</i> 614 N.W.2d 256 (Minn. Ct. App. 2000) .....	10
<i>Homan v. Commissioner of Public Safety,</i> 663 N.W.2d 568 (Minn. Ct. App. 2003) .....	18
<i>Igo v. Commissioner of Public Safety,</i> 615 N.W.2d 358 (Minn. Ct. App. 2000), <i>rev. denied</i> (Minn. Oct. 17, 2000) .....	20
<i>In re Welfare of C.L.L.,</i> 310 N.W.2d 555 (Minn. 1981) .....	1, 18
<i>Kohner v. Commissioner of Public Safety,</i> 483 N.W.2d 515 (Minn. Ct. App. 1992) .....	16
<i>Lamusga v. Commissioner of Public Safety,</i> 536 N.W.2d 644 (Minn. Ct. App. 1995), <i>rev. denied</i> (Minn. October 27, 1995) .....	1, 14, 19
<i>Larson v. Commissioner of Public Safety,</i> 405 N.W.2d 442 (Minn. Ct. App. 1987) .....	11
<i>Madison v. Commissioner of Public Safety,</i> 585 N.W.2d 77 (Minn. Ct. App. 1988), <i>rev. denied</i> (Minn. Dec. 15, 1988) .....	9, 20

<i>Norman v. Commissioner of Public Safety,</i> 404 N.W.2d 315 (Minn. Ct. App. 1987) .....	9
<i>Pallas v. Commissioner of Public Safety,</i> 781 N.W.2d 163 (Minn. Ct. App. 2010) .....	10
<i>State v. Busse,</i> 644 N.W.2d 79 (Minn. 2002).....	15, 16
<i>State v. Stone,</i> 572 N.W.2d 725 (Minn. 1997).....	17
<i>Stavlo v. Commissioner of Public Safety,</i> 379 N.W.2d 669 (Minn. Ct. App. 1986) .....	10
<i>Szczzech v. Commissioner of Public Safety,</i> 343 N.W.2d 305 (Minn. Ct. App. 1984) .....	17
<i>Thiele v. Stich,</i> 425 N.W.2d 580 (Minn. 1988).....	1, 18, 19
<i>Thorson v. Commissioner of Public Safety,</i> 519 N.W.2d 490 (Minn. Ct. App. 1994) .....	9, 10
<i>Vang v. Commissioner of Public Safety,</i> 432 N.W.2d 203 (Minn. Ct. App. 1988) .....	12
<i>Vangsness v. Vangsness,</i> 607 N.W.2d 468 (Minn. Ct. App. 2000) .....	10
<b>STATE STATUTES</b>	
Minn. Stat. § 14.06 (2012) .....	12
Minn. Stat. § 14.38 subd. 1 (2012).....	12
Minn. Stat. § 169A.75 (2012) .....	12
Minn. Stat. § 169.15 subd. 1 (2012).....	8
Minn. Stat. § 171.04 (2012) .....	1, 2, 16, 18
Minn. Stat. §171.04 subd. 1 (2012).....	11, 16
Minn. Stat. § 171.09 (2012) .....	11, 12

Minn. Stat. §171.09 subd. 1 (2012).....	14
Minn. Stat. § 171.14 (2012) .....	<i>passim</i>
Minn. Stat. § 171.19 (2012) .....	<i>passim</i>
Minn. Stat. § 171.25 (2012) .....	9

**STATE REGULATIONS**

Minn. R. 7409.0100 subp. 8a .....	13, 14
Minn. R. 7409.2800.....	12, 16
Minn. R. 7503.1300.....	15
Minn. R. Civ. P. 52.01.....	10

## LEGAL ISSUES

1. Whether Respondent had sufficient cause to cancel Appellant's driving privileges.

The district court held: In the affirmative. (RAD1-9).<sup>1</sup>

*Askildson v. Commissioner of Public Safety*, 403 N.W.2d 674 (Minn. Ct. App. 1987) *rev. denied* (Minn. May 28, 1997);

*Lamusga v. Commissioner of Public Safety*, 536 N.W.2d 644 (Minn. Ct. App. 1995), *rev. denied* (Minn. October 27, 1995); and

Minnesota Statute § 171.04 (2012).

2. Whether the cancellation and review of Appellant's driving privileges deprived Appellant of due process.

The district court held: Did not address.

*Thiele v. Stich*, 425 N.W.2d 580 (Minn. 1988); and

*In re Welfare of C.L.L.*, 310 N.W.2d 555 (Minn. 1981).

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<sup>1</sup> "RAD" references are to Respondent's Addendum which is attached hereto.

## STATEMENT OF THE CASE

This is an appeal of a driver's license reinstatement proceeding held pursuant to Minn. Stat. § 171.19 (2012), in which Appellant sought judicial review of the cancellation of his driving privileges under authority of Minn. Stat. § 171.04 and § 171.14 (2012). It arises out of Appellant's repeated contact with police regarding his unsafe driving habits, and the subsequent cancellation of his driver's license as inimical to public safety. By a Petition filed September 25, 2012, Appellant sought judicial review of the cancellation.

The matter came before the McLeod County District Court on October 25, 2012, the Honorable Michael R. Savre, presiding. At the hearing, Appellant challenged whether Respondent had sufficient cause to cancel and deny his driving privileges as inimical to public safety. The district court heard testimony from Appellant and Pamela Moe, an employee with the Department of Public Safety, Driver and Vehicle Services ("DPS"). The district court also received into evidence nine exhibits, including: (1) Appellant's driving record; (2) a copy of a 2008 Request for Examination of Driver; (3) a copy of a hearing report from a meeting on July 22, 2008, between Appellant and DPS; (4) a copy of a 2011 Request for Examination of Driver; (5) a copy of a hearing report from a meeting on May 31, 2011 between Appellant and DPS; (6) a copy of a 2012 Request for Examination of Driver; (7) a copy of a hearing report from August 8, 2012 from a meeting on August 8, 2012; (8) a copy of a DPS note approving cancellation of Appellant's driving privileges as inimical to public safety; and (9) a copy of the letter from DPS to Appellant giving notice of cancellation as inimical to public safety.

RA1-13<sup>2</sup>. Appellant takes the instant appeal from the district court's Order sustaining the cancellation of Appellant's driving privileges. RAD1-9.

## STATEMENT OF FACTS

### Appellant's Driving History.

On August 2, 2012, DPS sent a letter to Appellant informing him that his driver's license would be cancelled effective August 13, 2012. RA12-13. The letter listed the reason for the cancellation as inimical to public safety. *Id.*

DPS determined that Appellant's operation of a motor vehicle was inimical to public safety, after receiving numerous police reports and Requests for Examination of Driver<sup>3</sup> from law enforcement regarding Appellant's driving conduct. *See* RA3-7. DPS notified Appellant on multiple occasions to meet with a DPS agent regarding his driving. RA8-10.

In one Request for an Examination of Driver, Deputy Josh Baker of the Carver County Sheriff's Office, reported that he stopped Appellant on Highway 5 in Victoria after observing Appellant swerving and crossing the center and fog lines. RA3. Deputy Baker noted that the June 10, 2008, incident was the fifth time that employees of the Carver County Sheriff's Office had stopped Appellant in one year for the same driving conduct. *Id.*

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<sup>2</sup> "RA" references are to Respondent's Appendix which is attached hereto.

<sup>3</sup> A Request for Examination of Driver is a document completed by a law enforcement officer and submitted to DPS when the officer observes unusual, unsafe or illegal driving conduct or driver behavior that the officer believes should be reported to DPS.

After receiving the Request for Examination of Driver, DPS asked Appellant to appear for an interview. The first meeting occurred on July 22, 2008. RA8. DPS's agent noted that Appellant appeared in generally good health, that his vision was good, and that he had very good knowledge of signs and laws. *Id.* DPS's agent concluded that Appellant did not have to do anything further to maintain his driver's license at that time. *Id.*

In another report accompanying a Request for Examination of Driver, a Lester Prairie police officer stopped Appellant on May 8, 2011, at 12:26 a.m., after observing Appellant travelling at a very slow speed and crossing the fog and center lines. RA5. After speaking with Appellant, the officer indicated that he would follow Appellant home. RA6. While following Appellant, the officer observed Appellant travel thirty and forty-five miles per hour on a road with a sixty mile per hour speed limit. *Id.* The officer also observed Appellant randomly turn his blinker on and off. *Id.* The Lester Prairie officer again stopped Appellant's vehicle and explained to Appellant that his driving conduct was not safe and could cause an accident. *Id.* Because of the officer's safety concerns, Appellant's vehicle was parked on the shoulder, and the officer drove Appellant home. *Id.*

This Request for Examination of Driver prompted DPS to again direct Appellant to appear for an interview. This second meeting occurred on May 31, 2011. RA9. At this meeting, a DPS agent informed Appellant that he had to pass a written and road test by July 2, 2011, in order to maintain his driver's license. *Id.* The DPS agent advised Appellant that his driving privileges could be cancelled as inimical to public safety if he

continued to impede traffic with his driving conduct. *Id.* Appellant signed a hearing report, acknowledging that his driver's license could be cancelled if he did not improve his driving habits. *Id.*

A third Request for Examination of Driver was submitted by Corporal Baker from the Carver County Sheriff's Office. RA7. On or about July 19, 2012 at 11:31 p.m., Corporal Baker observed Appellant driving on the shoulder of the road at approximately forty miles per hour without using hazard lights. RA7. Appellant told Corporal Baker that he was driving on the shoulder because he was traveling slower than other traffic and was "finding the sweet spot for gas mileage." *Id.* Corporal Baker informed Appellant that it was illegal to drive on the shoulder unless it was an emergency. *Id.* Corporal Baker also noted that the Carver County Sheriff's Office had had nine prior contacts with Appellant since 2007 for similar driving conduct. *Id.* Corporal Baker noted that he was concerned that Appellant "felt he was just fine to drive under the speed limit and truly did not comprehend why it was an issue to do so." *Id.*

Upon receiving this third Request for Examination of Driver, DPS cancelled Appellant's driving privileges as inimical to public safety. RA11. DPS's decision to cancel Appellant as inimical to public safety was based upon documents submitted to DPS, as well as its interviews with Appellant. RA9.

On August 8, 2012, Appellant met with Pamela Moe, a driver improvement specialist with DPS. T. 34; RA10. Appellant acknowledged to Ms. Moe that he signed a DPS statement in 2011, which advised him he could lose his driving privileges if he did

not improve his driving. *Id.* Based on Appellant's demeanor during this interview, Ms. Moe got the impression that Appellant would not change his manner of driving. *Id.*

The Evidence Submitted to the District Court at the Hearing on Appellant's Petition for Judicial Review.

At the hearing on October 25, 2012, Judge Savre acknowledged that he had reviewed the exhibits submitted by DPS in support of its cancellation. T. 7.<sup>4</sup> The court commented that DPS's documentation appeared to indicate that Appellant was capable of "appropriate driving conduct." T. 6. The court further observed that Appellant simply "declines to drive in a fashion that officers who regularly encounter him out on the highway feel is safe." T. 6.

Appellant testified that he has been accident free for thirty-five years and pays \$117.00 every six months for liability insurance on his 2000 Ford Ranger truck, which has 277,000 miles on it. T. 10. Appellant acknowledged attending interviews with DPS. T. 12.

Appellant testified that he sets his cruise control at forty-eight miles per hour because he has had his truck for ten years and knows it "inside and out." T. 15. Appellant claimed that forty-eight miles per hour is his truck's "sweet spot" for gas. *Id.* Appellant further explained that there are animals on the roads and "you have to be really careful and slow, because I just carry liability only on my truck." *Id.* Appellant testified that he would have to pay to replace his truck if he hit an animal so he slows down in

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<sup>4</sup> "T." references are to pages of the transcript of the district court proceedings held on October 25, 2012.

“critter areas.” T. 15-16. Appellant did not believe he had ever driven over the fog or center lines. T. 16.

Appellant further admitted that while he only has one citation on his driving record, he has been stopped more than one time by police. T. 17. Appellant could not recall many of the incidents, or tell the court how many times he has been stopped for his driving conduct. *Id.*

When Appellant was asked if he drove slowly because he only had liability insurance, he responded:

It's -- When I said the critters, you got to keep that in mind when there's deer and critters and stuff. You're going to be replacing your car yourself. Ain't nobody gonna be replacing it except you.

T. 19. Appellant admitted he is capable of driving at highway speeds in excess of fifty-five miles per hour, and does so when it suits him. T. 28. The district court asked Appellant if he had ever hit an animal. T. 29. Appellant answered that he had, but that it had not damaged his vehicle. T. 29. Appellant also admitted that he drives on the shoulder to allow cars behind him to pass. T. 20. Appellant does not believe that driving on the shoulder is illegal. T. 27.

Ms. Moe testified that she met with Appellant on August 8, 2012, and that they discussed the safety reasons why Appellant should not drive on the shoulder. T. 34, 39. Ms. Moe explained to Appellant that his slow driving behavior puts other vehicles in danger when they have to slow down for him. T. 39. Ms. Moe further explained that Appellant's habit of pulling onto the shoulder to allow other vehicles to pass is a danger.

T. 40. Ms. Moe acknowledged that Appellant indicated to her that he understands the rules and the road signs, but that he chooses to ignore them. T. 40, 42.

#### The District Court's Ruling

At the close of testimony, the district court cited Minnesota Statute § 169.15, subdivision 1, Impeding Traffic, and indicated that he was concerned about some of the testimony. T. 44. The district court further noted that a vehicle should be driven within a single lane. T. 44-45. After hearing closing arguments, the district court made its decision on the record, stating:

Okay. Well, I'm going to make my decision on the record. I think, based on the testimony I hear, that I cannot find that the commissioner's decision to cancel Mr. Constans' driving privileges is arbitrary, capricious, or unreasonable.

I've heard that there were nine previous incidents. Three separate times that he's been interviewed by the department; the second time he signed an agreement that if there were further problems, that he understood he would be having his license canceled, but he still continued to drive in the same fashion.

I've heard Mr. Constans admit, himself, on the stand that he consistently and regularly drives at 48 miles per hour. Police officers have claimed that he's driving slower than that, but I don't have any evidence that that's, in fact, the case.

But he himself admits that he routinely puts his cruise control on at 48, and also that he drives on the shoulder on a regular basis; maybe, in his mind, thinking that's the safe thing to do to allow cars that have accumulated behind him to be able to pass.

But driving on the shoulder on a regular basis is not permitted; that does constitute a safety issue because the shoulder is not always designed for regular traffic, that's only for emergency use. And the Minnesota statutes require that a person not drive a motor vehicle at such a speed as to impeded the normal or reasonable movement of traffic.

So I have to find and conclude that the Department of Vehicle Services' decision to cancel in this particular case is within their authority and that their cancellation order is sustained. But I am going to make a suggestion, and that is that I think that the parties should talk and see if you can come up with a plan.

T. 52-53. The district court issued an Order sustaining the cancellation of Appellant's driving privileges. RAD1-9.<sup>5</sup>

## ARGUMENT

### I. STANDARD OF REVIEW

By statute, the authority to determine the qualifications of licensees is vested in the Commissioner of Public Safety, subject only to judicial review under Minn. Stat. § 171.19 (2012); Minn. Stat. § 171.25 (2012); *see also, Norman v. Commissioner of Public Safety*, 404 N.W.2d 315 (Minn. Ct. App. 1987). “[T]here is a presumption of regularity and correctness when license matters are reviewed” by this Court. *Thorson v. Commissioner of Public Safety*, 519 N.W.2d 490, 493 (Minn. Ct. App. 1994).

In a proceeding under Minn. Stat. § 171.19, the district court conducts a trial de novo and may independently determine the facts relating to whether a driver is entitled to license reinstatement. *Madison v. Commissioner of Public Safety*, 585 N.W.2d 77, 82 (Minn. Ct. App. 1988), *rev. denied* (Minn. Dec. 15, 1988). Like the district court, this Court may reverse the Commissioner's licensure determination only if it was fraudulent,

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<sup>5</sup> At the close of the hearing, the district court suggested that the parties discuss conditions Appellant could meet to regain his privilege to drive. T. 53-57. Since the hearing, DPS has set conditions for Appellant to meet to regain his driver's license; however, as of filing, Appellant has not complied with the requirements.

arbitrary, unreasonable, unsupported by substantial evidence, or not within its jurisdiction and powers. *Thorson*, 519 N.W.2d at 493; *Stavlo v. Commissioner of Public Safety*, 379 N.W.2d 669, 671 (Minn. Ct. App. 1986); *Antl v. State, Dep't of Pub. Safety*, 353 N.W.2d 240, 242 (Minn. Ct. App. 1984).

This Court will not disturb the district court's factual findings unless they are clearly erroneous. *Busch v. Commissioner of Public Safety*, 614 N.W.2d 256, 258 (Minn. Ct. App. 2000). A finding is clearly erroneous if the reviewing court is left with a definite and firm conviction that a mistake has been made. *Vangsness v. Vangsness*, 607 N.W.2d 468, 472 (Minn. Ct. App. 2000). This Court gives due regard to the district court's assessment of witness credibility. Minn. R. Civ. P. 52.01. This Court reviews de novo the district court's application of the law in proceedings held pursuant to section 171.19. *Pallas v. Commissioner of Public Safety*, 781 N.W.2d 163, 167 (Minn. Ct. App. 2010).

In the present case, Appellant challenges the district court's conclusion that Respondent had sufficient cause to cancel Appellant's driving privileges. The record supports the district court's findings and the district court correctly applied the law to those findings; therefore, the district court's decision should be affirmed.

**II. THE DISTRICT COURT CORRECTLY DETERMINED THAT RESPONDENT HAD SUFFICIENT CAUSE TO CANCEL APPELLANT'S DRIVING PRIVILEGES.**

In a proceeding pursuant to Minn. Stat § 171.19, the Appellant bears the burden of producing evidence to prove entitlement to license reinstatement. *Pallas v. Commissioner of Public Safety*, 781 N.W.2d 163, 166 (Minn. Ct. App. 2010). The

burden is not on the Commissioner to justify her action, but is upon Appellant to show that he is entitled to reinstatement. *See, e.g., Larson v. Commissioner of Public Safety*, 405 N.W.2d 442 (Minn. Ct. App. 1987); *Askildson v. Commissioner of Public Safety*, 403 N.W.2d 674 (Minn. Ct. App. 1987) *rev. denied* (Minn. May 28, 1987). In this case, the district court properly determined that Appellant failed to show that he is entitled to reinstatement, and the Commissioner's decision to cancel his driver's license was arbitrary, capricious or unreasonable. T. 52; Order at RAD1.

The legislature has explicitly directed the Commissioner of Public Safety when a driver's license "shall not [be] issue[d]." Minn. Stat. § 171.04, subd. 1 (2012). The statute states in relevant part:

Subdivision 1. **Persons not eligible.** The department shall not issue a driver's license: \*\*\* (10) to any person when the commissioner has good cause to believe that the operation of a motor vehicle on the highways by the person would be inimical to public safety or welfare;

*Id.*

The legislature further authorizes the Commissioner of Public Safety to impose licensing restrictions and cancel a driver's license. Minn. Stat. §§ 171.09 and 171.14 (2012). The legislature directed the Commissioner to impose driving restrictions under certain conditions:

The commissioner, when good cause appears, may impose restrictions suitable to the licensee's driving ability or other restrictions applicable to the licensee as the commissioner may determine to be appropriate to assure the safe operation of a motor vehicle by the licensee.

Minn. Stat. § 171.09. The legislature also provided guidelines governing when a driver's license may or shall be cancelled:

(a) The commissioner may cancel any driver's license upon determination that (1) the licensee was not entitled to the issuance of the license, (2) the licensee failed to give the required or correct information in the application, (3) the licensee committed any fraud or deceit in making the application, or (4) the person, at the time of the cancellation, would not have been entitled to receive a license under section 171.04.

(b) The commissioner shall cancel the driver's license of a person described in paragraph (1), clause (3), for 60 days or until the required or correct information has been provided, whichever is longer.

Minn. Stat. § 171.14.

Beyond the statutes, the legislature authorized the Commissioner to adopt all rules necessary to the implementation of the driver licensing laws under Minn. Stat. § 14.06 (2012) and Minn. Stat. § 169A.75 (2012). *See, e.g., Vang v. Commissioner of Public Safety*, 432 N.W.2d 203 (Minn. Ct. App. 1988). The statutory provisions are further implemented by formal rules in Chapter 7409 of Minnesota Rules, which have been properly promulgated and therefore "have the force and effect of law." Minn. Stat. § 14.38, subd. 1 (2012).

Minnesota Rule 7409.2800 (2011) states:

The commissioner shall cancel the driver's license of a person on determining that the person:

- A. was not entitled to be issued a driver's license;
- B. has failed to give the required or correct information in the application for a driver's license;
- C. has committed a fraud or deceit in applying for a driver's license;
- D. at the time of cancellation, would not have been entitled to receive a license under Minnesota Statutes, section 171.04;
- E. has failed to submit to an examination under Minnesota Statutes, section 171.13; or
- F. has a visual acuity of 20/80 or greater and the person is convicted of a traffic violation or is involved in a motor vehicle accident in which the commissioner determines the person was at fault.

*Id.*

The rules also explicitly define the “sufficient cause to believe” standard in Minn. R. 7409.0100, subp. 8a. That rule states:

“Sufficient cause to believe” means grounds put forth in good faith which are not arbitrary, irrational, unreasonable, or irrelevant and which make the proposition asserted more likely than not, provided the grounds are based on at least one of the following sources:

- A. written information from an identified person;
- B. facts or statements supplied by the applicant or driver;
- C. driver’s license and accident records;
- D. court documents and police records;
- E. facts of which the commissioner or the commissioner’s employees have personal knowledge.

*Id.*

When applied against this standard, the Commissioner had good cause to cancel Appellant’s driving privileges as inimical to public safety. DPS cancelled Appellant’s driver’s license after it received numerous reports from law enforcement officers indicating that Appellant’s driving conduct created a public safety hazard and put Appellant and the driving public at risk. *See* RA11-13.

Appellant was advised that if his driving conduct did not improve, his driver’s license would be cancelled. RA9. Even after Appellant signed a statement acknowledging his understanding that his license would be cancelled if he continued his driving habits, Appellant did not improve his driving behavior. *Id.* Accordingly, DPS cancelled his driving privileges. RA11-13. The Commissioner properly imposed

restrictions on Appellant's driver's license to ensure the safe operation of his motor vehicle, and the safety and welfare of the driving public. Minn. Stat. § 171.09, subd. 1.

Appellant nevertheless suggests that DPS cannot rely on the information in any police report where a criminal conviction of the driving code did not result. Appellant is mistaken because a conviction is not required to cancel a driver's license, and Appellant cannot point to any authority to support his assertion. In fact, a report from a police officer gives the Commissioner sufficient cause to believe that Appellant is a public safety risk, and may be used by the Commissioner to make a license determination. Minn. R. 7409.0100, subp. 8a. (2011).

Appellant also claims that a cancellation may only result from multiple convictions for alcohol-related offenses. Contrary to this claim, "[t]he commissioner has the discretion to decide what conduct would render a driver inimical to public safety." *Askildson*, 403 N.W.2d at 677. Indeed, a driver may be cancelled inimical to public safety, not only for having multiple alcohol offenses, but for failing to comply with conditions of one's driver's license. *Lamusga v. Commissioner of Public Safety*, 536 N.W.2d 644 (Minn. Ct. App. 1995), *rev. denied* (Minn. Oct. 27, 1995).

In *Lamusga*, the Commissioner cancelled Lamusga's driver's license when law enforcement found him walking down the street and he appeared very intoxicated. *Id.* at 646. Lamusga argued that there was "no good cause to believe he was inimical to public safety merely because he consumed alcohol without driving a motor vehicle." *Id.* at 649. This Court disagreed, affirming Lamusga's cancellation as inimical to public safety. *Id.*

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~~*Lamusga* illustrates that DPS has been given the task by the legislature to minimize risk~~

to the public on Minnesota roads and that DPS has the authority to impose conditions on one's driver's license to promote public safety on the roads. *Id.*

Here, the Commissioner properly determined that Appellant's unrepentant illegal and unsafe driving conduct was inimical to public safety. RA11. Despite being stopped at least nine times by law enforcement, and participating in numerous meetings with DPS agents, Appellant persisted in the same illegal and unsafe driving conduct. RA1-9. Appellant admitted that his driving conduct was a result of choices he made. T. 15, 28. The Commissioner could hardly ignore multiple reports from law enforcement, and followed the legislature's directive to minimize risk on the roads, when she cancelled Appellant's driving privileges. The district court reviewed the evidence that supported the Commissioner's decision, heard Appellant's testimony, and correctly determined that the Commissioner had not acted in an unreasonable or arbitrary manner when it sustained the Commissioner's decision. T. 52-56.

Appellant nevertheless argues that driving privileges may only be cancelled as inimical to public safety based upon multiple alcohol offenses. Appellant relies on *State v. Busse*, 644 N.W.2d 79 (Minn. 2002), in support of this argument. Appellant's reliance is misplaced because the facts are distinguishable.

In *Busse*, the issue was whether a charge of driving after cancellation was a criminal/prohibitory offense that a state law enforcement officer could enforce against a tribal member on the White Earth Reservation. *Id.* at 80-81. *Busse*'s driver's license had been cancelled for multiple alcohol offenses, so the Court did not need to review any rules other than Minnesota Rule 7503.1300, which lists the circumstances for

cancellation after multiple alcohol offenses. *Id.* at 84. While multiple alcohol-related offenses are a common basis used to support a driver's cancellation, it is not the only basis to support cancellation of a driver's license. Minn. Stat. § 171.04, subd. 1; Minn. Stat. § 171.14; Minn. R. 7409.2800; *see also, Kohner v. Commissioner of Public Safety*, 483 N.W.2d 515 (Minn. Ct. App. 1992) (upholding cancellation of driving privileges upon receipt of a letter from the licensee's physician expressing his concern, and that of the licensee's family, about her declining ability to drive safely).

Here, the Commissioner was *required* by law to cancel Appellant's driving privileges when she had good cause to believe, based on the reports from law enforcement, that Appellant's operation of his motor vehicle was unsafe and posed a threat to the driving public. Minn. Stat. § 171.04 ("the department *shall not* issue a driver's license to any person when the commissioner has good cause to believe that the operation of a motor vehicle on the highways by the person would be inimical to the public safety or welfare) (emphasis added); Minn. Stat. § 171.14 ("the commissioner may cancel any driver's license upon determination that . . . (4) the person, at the time of the cancellation, would not have been entitled to receive a license under section 171.04").

Yet, without citation to authority, Appellant claims that the Commissioner must prove his driving conduct actually threatens physical harm before she can cancel his driving privileges. Appellant relies on his driving record, with only one petty misdemeanor offense, to demonstrate that his driving conduct does not threaten physical harm. Appellant's claim asks this Court to put his private interest against that of the driving public, and should be summarily rejected.

In fact, “[t]he general public policy behind the state’s traffic and driving laws is to protect the safety of persons and property on the roadways.” *State v. Stone*, 572 N.W.2d 725, 730 (Minn. 1997). The public policy underlying the law may be substantially heightened when there is a “greater risk of direct injury to persons or property on the roadways.” *Id.* at 731. Furthermore, this Court has repeatedly recognized the remedial nature of the driving laws, and acknowledged the paramount public purpose the laws advance. *Szczzech v. Commissioner of Public Safety*, 343 N.W.2d 305 (Minn. Ct. App. 1984) (holding that implied consent laws are remedial statutes intended for the protection of the public and should be liberally construed towards that end).

Here, Appellant has been repeatedly advised by police officers and DPS agents that his driving conduct is unsafe and unacceptable. DPS agents met with Appellant in 2008 and again in 2011 to explain why his driving behavior was dangerous. RA8-9. Appellant admitted to the district court that his son told him to change his driving habits. T. 27. Appellant himself believed he would have to change his driving conduct to avoid contact with DPS and maintain his driver’s license. T. 27. While Appellant may not believe his driving is dangerous, he acknowledged at the hearing that others believe it is and that he would have to change his habits if he wanted to drive. T. 56.

The record supports the Commissioner’s cancellation of Appellant’s driving privileges. The district court’s findings are not clearly erroneous. Accordingly, this Court should affirm the district court’s Order.

### III. THE CANCELLATION AND REVIEW OF APPELLANT'S DRIVING PRIVILEGES DID NOT DEPRIVE APPELLANT OF DUE PROCESS.

For the first time on appeal, Appellant argues that his driver's license was cancelled without due process. Appellant asserts that the sufficient-cause-to-believe standard that governs the Commissioner's decision whether to cancel a driver's license as inimical to public safety offended his right to due process, and that the judicial hearing conducted pursuant to Minn. Stat. § 171.19 was "not meaningful" and deprived Appellant of due process. Appellant also claims that the Commissioner used police reports to support his cancellation that he was not able to challenge. Respondent construes this argument to be a challenge to the constitutionality of the statutory framework for the cancellation of driving privileges, and the adequacy of the review of a cancellation, under Minn. Stat. §§ 171.04, .14, and .19, issues not raised or addressed in the district court.

Constitutional issues generally will not be addressed for the first time on appeal. *In re Welfare of C.L.L.*, 310 N.W.2d 555, 557 (Minn. 1981) (declining to address a constitutional issue raised for the first time on appeal from a termination of parental rights); *see also, Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988) (holding that issues not raised in the district court will not be considered on appeal). This Court has previously specifically refused to address challenges to the constitutionality of the review process afforded under Minn. Stat. § 171.19 where the party fails to raise constitutional challenges in the district court. *Homan v. Commissioner of Public Safety*, 663 N.W.2d 568, 571 n.2 (Minn. Ct. App. 2003) (holding that because appellant confined his district court presentation to the statute's construction, not its constitutionality, constitutionality

is not properly before the court) (citing *Thiele*, 425 N.W.2d at 582). Here, too, Appellant failed to raise any challenge to the constitutionality of the review process conducted pursuant to section 171.19. Accordingly, this issue is not properly before this Court.

Even if this Court were to consider Appellant's newly raised argument, this Court has addressed the constitutionality of the cancellation and review procedures afforded under Chapter 171, and held that "[t]he prehearing cancellation and denial of a driver's license based upon violation of a requirement that the driver totally abstain from the use of alcohol or controlled substances does not violate procedural due process." *Lamusga*, 536 N.W.2d at 647-48. In *Lamusga*, this Court specifically considered whether the sufficient-cause-to-believe standard and the evidence allowable under the standard provide a reasonably reliable basis to test the fact of a person's post-abstinence consumption, and held as constitutional the Commissioner's reliance on police officer representations to establish a factual basis for cancellation. *Id.*; see also, *Boeser v. Commissioner of Public Safety*, No. A06-2032, 2007 WL 4234550 at \*3-4 (unpublished opinion)<sup>6</sup> (relying on *Lamusga* and stating that there is "no merit to the notion that due process requires more than witness testimony or police reports to sustain a fact").

Moreover, Appellant exercised his right of judicial review in the district court. The district court considered Appellant's testimony; the testimony of the other witness;

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<sup>6</sup> Pursuant to Minn. Stat. § 480A.08, subd. 3 (2012), copies of all unpublished opinions and order opinions cited in this Brief are reproduced in Respondent's Appendix (RA).

and numerous exhibits.<sup>7</sup> The district court conducted a thorough, independent review, as detailed in the district court's oral findings of fact and conclusions of law on the record at the end of the hearing. T. 52-57; *see also*, Order RAD1; *see Igo v. Commissioner of Public Safety*, 615 N.W.2d 358, 361 (Minn. Ct. App. 2000), *rev. denied* (Minn. Oct. 17, 2000) (holding that appellant received adequate review because the district court "received new evidence" at the reinstatement hearing, and the "findings and conclusion reflect that the court examined the facts and resolved the case after the appropriate independent review"). The fact that the district court rejected Appellant's evidence and claims does not create a due process violation. Accordingly, Appellant's constitutional challenges are without merit, and the district court properly sustained the cancellation of his driving privileges after its independent, de novo review.

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<sup>7</sup> Due process is satisfied because a district court "is mandated to take testimony and examine into the facts of the case to determine whether the petitioner is entitled to a license or is subject to a revocation/cancelation, etc." *Madison*, 585 N.W.2d at 80; *see also*, Minn. Stat. § 171.19.

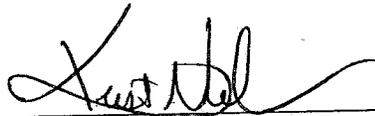
## CONCLUSION

For the foregoing reasons, Respondent respectfully requests that the district court's Order sustaining the Commissioner's cancellation of Appellant's driver's license be affirmed.

Dated: April 15, 2013

Respectfully submitted,

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