

No. A09-1061

---

STATE OF MINNESOTA

IN COURT OF APPEALS

---

Irwin I. Thompson,

Relator,

vs.

Commissioner Dr. Sanne Magnan,  
Minnesota Department of Health,

Respondent.

---

RESPONDENT'S BRIEF

---

JON GEFFEN, ESQ.  
ARNESON & GEFFEN, LLC  
Atty. Reg. No. 0276753

333 Washington Avenue North  
Suite 202  
Minneapolis, MN 55401  
(612) 465-8580

ATTORNEY FOR RELATOR

LORI SWANSON  
Attorney General  
State of Minnesota

AUDREY KAISER MANKA  
Assistant Attorney General  
Atty. Reg. No. 0067179

445 Minnesota Street, Suite 1200  
St. Paul, MN 55101-2130  
(651) 297-5930

ATTORNEYS FOR RESPONDENT

---

## TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES .....	iii
LEGAL ISSUES .....	1
STATEMENT OF THE CASE.....	3
STATEMENT OF FACTS.....	4
A. Relator’s Criminal History.....	4
B. Relator’s Disqualification. ....	4
C. The Commissioner’s Reconsiderations of Relator’s Disqualification.....	6
SCOPE OF REVIEW.....	7
ARGUMENT .....	8
I. SUBSTANTIAL EVIDENCE SUPPORTS THE DEPARTMENT’S DECISION. ....	8
A. Relator’s Disqualification Was Based On Correct Information. ....	9
B. Mitigating Factors Do Not Change Relator’s Disqualification. ....	11
II. THE BACKGROUND STUDY LAW DOES NOT REQUIRE A HEARING WHEN A SET ASIDE IS GRANTED.....	12
A. The Relevant Law Clearly Shows That No Hearing is Required When a Set Aside is Granted.....	12
B. Every Law Shall Be Construed, If Possible, to Give Effect to All of Its Provisions. ....	14
C. Section 245C.27, Subdivision 1(A), Was Amended to Clarify the Original Legislative Intent to Provide a Hearing Right Only When the Disqualification Is Not Set Aside.....	16
D. Relator Is Not An Aggrieved Party Under The Law. ....	17

III.	THE BACKGROUND STUDY LAW IS CONSTITUTIONAL.....	17
A.	Application of Minn. Stat. § 245C.27, Subd. 1(c), Did Not Deprive Relator Of Due Process.....	18
1.	This Court has upheld the background study law from a due process challenge.....	19
2.	The State provided due process to Relator. ....	21
B.	Equal Protection Was Not Violated.....	24
1.	Relator fails to show that he is similarly situated to others who may be treated differently. ....	24
2.	Rational basis is the appropriate level of scrutiny for Relator’s equal protection challenge.....	26
3.	The disqualification of an individual who has committed an act for which there is a preponderance of evidence it was one of the crimes listed in the law is rationally related to the state’s legitimate interest in protecting vulnerable individuals. ....	27
	CONCLUSION.....	29

## TABLE OF AUTHORITIES

Page

### FEDERAL CASES

<i>Mathews v. Eldridge</i> , 424 U.S. 319 (1976).....	1, 18, 19, 24
--	---------------

### STATE CASES

<i>Associated Builders and Contractors v. Ventura</i> , 610 N.W.2d 293, (Minn. 2000).....	17
<i>Dobie v. Ludeman</i> , No. A08-1546 (Minn. Ct. App. June 16, 2009) (unpublished).....	2, 11, 12
<i>Fosselman v. Comm'r of Human Servs.</i> , 612 N.W.2d 456 (Minn. Ct. App. 2000) .....	19, 20
<i>Gluba ex rel. Gluba v. Bitzen &amp; Ohren Masonry</i> , 735 N.W.2d 713 (Minn. 2007).....	25
<i>Greene v. Comm'r of Dept. of Human Services</i> , 755 N.W.2d 713 (Minn. 2008).....	24
<i>Humenansky v. Minn. Bd. of Med. Examiners</i> , 525 N.W.2d 559 (Minn. Ct. App. 1994) <i>rev. denied</i> (Minn. Feb. 14, 1995).....	18
<i>In re Black</i> , 522 N.W.2d 352 (Minn. Ct. App. 1994).....	17
<i>In re Excess Surplus Status of Blue Cross and Blue Shield of Minnesota</i> , 624 N.W.2d 264 (Minn. 2001).....	1, 8
<i>In re Getsug</i> , 186 N.W.2d 686 (Minn. 1971).....	17
<i>In re Haggerty</i> , 448 N.W.2d 363 (Minn. 1989).....	17
<i>Lundberg v. Jeep Corp.</i> , 582 N.W.2d 268 (Minn. Ct. App. 1998).....	24
<i>Murphy v. DHS</i> , 765 N.W.2d. 100 (Minn. Ct. App. 2009).....	26

<i>Reserve Mining Co. v. Herbst</i> , 256 N.W.2d 808 (Minn. 1977).....	7
<i>Rodne v. Comm'r of Human Servs.</i> , 547 N.W.2d 440 (Minn. Ct. App. 1996).....	7
<i>State ex rel. Spannas v. Lutsen Resorts, Inc.</i> , 310 N.W.2d 495 (Minn. 1981).....	24, 25
<i>State v. Ross</i> , 676 N.W.2d 301 (Minn. Ct. App. 2004).....	10
<i>State v. Russell</i> , 477 N.W.2d 886 (Minn. 1991).....	26
<i>Sweet v. Comm'r of Human Servs.</i> , 702 N.W.2d 314 (Minn. Ct. App. 2005), <i>rev. denied</i> (Nov. 15, 2005).....	passim
<i>Unity Church of St. Paul v. State</i> , 694 N.W.2d 585 (Minn. Ct. App. 2005), <i>rev. dismissed</i> (Minn. June 9, 2005).....	26
<i>White v. Minnesota Dep't of Natural Res.</i> 567 N.W.2d 724 (Minn. Ct. App. 1997), <i>rev. denied</i> (Minn. Oct. 31, 1997).....	7

**STATE STATUTES**

Minn. Stat. § 144.057 (2008).....	1, 5
Minn. Stat. § 144.057, subd. 3 (2008).....	6
Minn. Stat. § 152.023.....	3, 5
Minn. Stat. § 152.18.....	11
Minn. Stat. § 245C.03 (2008).....	4
Minn. Stat. § 245C.14, subd. 1(a)(2).....	3, 5, 25
Minn. Stat. §§ 245C.14-15 (2008).....	3, 14
Minn. Stat. § 245C.15.....	passim
Minn. Stat. § 245C.15, subd. 2(a) (2008).....	passim
Minn. Stat. § 245C.15, subd. 1-4.....	15
Minn. Stat. § 245C.15, subd. 1, 3, and 4.....	12

Minn. Stat. § 245C.21 (2008).....	3
Minn. Stat. § 245C.22 (2008).....	passim
Minn. Stat. § 245C.22, subd. 1 (c) (2008).....	22
Minn. Stat. § 245C.22, subd. 3.....	21, 27
Minn. Stat. § 245C.22, subds. 2 and 4 (2008).....	6, 9, 20, 22
Minn. Stat. § 245C.23 .....	15
Minn. Stat. § 245C.27, subd. 1.....	12
Minn. Stat. § 245C.27, subd. 1(a) (2008).....	passim
Minn. Stat. § 245C.27, subd. 1(c) .....	passim
Minn. Stat. § 245C.27, subd. 1(d).....	13
Minn. Stat. § 245C.27, subd. 1(e) .....	13
Minn. Stat. § 245C.27, subd. 2(a) .....	13
Minn. Stat. § 245C.27, subd. 2(c) .....	13
Minn. Stat. § 245C.28, subd. 3.....	13
Minn. Stat. § 245C.28, subd. 3(a) .....	13
Minn. Stat. § 245C.28, subd. 3(b).....	13
Minn. Stat. § 245C.29 .....	15
Minn. Stat. § 245C.29, subd. 2.....	13
Minn. Stat. § 256.045.....	15
Minn. Stat. § 256.045, subd. 3(a).....	14, 15
Minn. Stat. § 256.045, subd. 3(a)(10) .....	12, 14, 15, 16
Minn. Stat. § 256.0451, subd. 19 (2008).....	11
Minn. Stat. § 480A.06, subd. 3 (2008).....	7
Minn. Stat. § 626.556, subd. 3 .....	15

Minn. Stat. § 626.557, subd. 3 .....	15
Minn. Stat. § 645.16 .....	14
Minn. Stat. § 645.26 .....	16
Minn. Stat. § 645.26, subd. 1 (2008).....	16
Minn. Stat. ch. 152 .....	12, 25
Minn. Stat. ch. 245C.....	3, 12, 14, 15
Minn. Stat. ch. 606 (2008).....	7
Minn. Stat. ch. 645 .....	14

## LEGAL ISSUES

- I. The Department of Human Services disqualified Relator from working in direct contact with patients, residents and other vulnerable adults receiving services from facilities or programs licensed by the Department of Health based upon a preponderance of evidence that he had committed an act that meets the definition of third degree possession of a controlled substance. The Commissioner of Health set aside that disqualification. Must the Commissioner of Health also give Relator a hearing on the underlying disqualification?

**In accordance with Minn. Stat. § 245C.27, subd. 1(a) (2008), the Commissioner properly refused to give Relator a hearing on the underlying disqualification.**

Citations:

Minn. Stat. § 144.057 (2008).  
Minn. Stat. § 245C.15, subd. 2(a) (2008).  
Minn. Stat. § 245C.27, subd. 1(a) (2008).

- II. Is the disqualification of Relator based upon substantive evidence or arbitrary and capricious?

**The Commissioner's decision was based upon substantive evidence and was not arbitrary or capricious.**

Citations:

*In re Excess Surplus Status of Blue Cross and Blue Shield of Minnesota*, 624 N.W.2d 264, 278 (Minn. 2001).

- III. Did the Commissioner violate due process by not giving Relator a hearing on the disqualification?

**Relator is not entitled to a hearing when his disqualification has been set aside.**

Citations:

*Mathews v. Eldridge*, 424 U.S. 319 (1976).

IV. Did the Department of Health violate the law by not properly considering mitigating factors?

**Mitigating factors do not change the length of Relator's disqualification.**

Citations:

*Dobie v. Ludeman*, No. A08-1546 (Minn. Ct. App. June 16, 2009) (unpublished).

## STATEMENT OF THE CASE

In Minnesota, individuals who work with vulnerable populations in certain facilities that are licensed by the State must undergo a background study by the Minnesota Department of Human Services (“DHS”) pursuant to the Background Study Law, Minn. Stat. ch. 245C. On December 31, 2008, pursuant to Minn. Stat. §§ 245C.14-15 (2008), DHS notified Relator that he was disqualified from “any position allowing direct contact with, or access to, persons receiving services from facilities licensed by” DHS, the Minnesota Department of Health (“Department” or “MDH”), facilities serving children or youth that are licensed by the Department of Corrections, and from unlicensed Personal Care Provider Organizations. *See* Relator’s Appendix (“Rel. App.”) at A.1. The grounds for Relator’s disqualification are statutory: under the Background Study Law, DHS determined that there is a preponderance of evidence that on September 5, 1995, Relator committed an act in Hennepin County that meets the definition of Minn. Stat. § 152.023, felony third degree controlled substance crime, which is a disqualifying characteristic. *See* Minn. Stat. § 245C.14, subd. 1(a)(2) and § 245C.15, subd. 2(a) (2008).

Relator requested, pursuant to Minn. Stat. § 245C.21 (2008), and the Commissioner of Health granted, pursuant to Minn. Stat. § 245C.22, a “set aside” of his disqualification allowing him to work at the University of Minnesota School of Social Work. *See* Rel. App. at 41. The Department also notified the University of Minnesota

School of Social Work that Relator's disqualification had been set aside. *See* Tab 17.<sup>1</sup> Counsel for Relator requested clarification about whether Relator was entitled to a hearing on the underlying disqualification. *See* Rel. App. A.42. On June 4, 2009, the Department advised Relator's counsel that no hearing was authorized under the law because Relator's disqualification had been set aside. *See* Rel. App. at A.44. This appeal followed.

### STATEMENT OF FACTS

#### A. Relator's Criminal History.

There is no dispute that Relator was arrested in 1995, and charged with possession of a controlled substance in the third degree. *See* Rel. App. at A.4-9. Likewise, it is clear that Relator was not convicted of the crime; rather Relator was referred to the drug court, and participated in a drug diversion program. *See id.* The criminal charges against Relator were dismissed without an adjudication of guilt on February 21, 1998. *See id.*

#### B. Relator's Disqualification.

Relator applied to work at the University of Minnesota School of Social Work. *See* Rel. App. at A.1. State law requires a background study on an individual when the individual works, or applies to work, in a position that involves direct contact with or access to people served by certain licensed facilities, agencies or programs.<sup>2</sup> *See* Minn. Stat. § 245C.03 (2008). The Department contracted with DHS to conduct the background

---

<sup>1</sup> "Tab" refers to the Administrative Record in the above-referenced matter.

<sup>2</sup> "(E)ducational programs that train individuals by providing direct contact services in licensed programs" may also request background studies. *See* Minn. Stat. § 245C.03, subd. 4 (2008).

studies for individuals who apply to work in facilities licensed by the Department. *See* Minn. Stat. § 144.057 (2008).

DHS conducted a background study on Relator in December 2008, and determined that he had a disqualifying characteristic, which was a preponderance of evidence that he committed an act in Hennepin County on September 5, 1995, that meets the definition of a crime listed in Minn. Stat. § 245C.15 (Minn. Stat. § 152.023 - felony third degree controlled substance crime). *See* Rel. App. at A.1 and Minn. Stat. §§ 245C.14, subd. 1(a)(2) and 245C.15, subd. 2(a) (2008).

According to the police report, Relator was the subject of an undercover drug purchase when he fled the police. *See* Rel. App. at A.14. As Relator was running, a police officer saw him “throw something from the crotch of his pants, over the fence, and into the rear of” a nearby property. *See* Rel. App. at 12. The police report indicates that two police officers tackled Relator and handcuffed him. *Id.* The police then recovered a cellophane baggie containing crack cocaine approximately two feet from where Relator had been arrested. *See id.* The substance in the baggie tested positive for cocaine and weighed 4.8 grams. *See* Rel. App. at A.15. Relator was charged with two counts of controlled substance crimes in the third degree. *See* Rel. App. at A.4. He entered a drug diversion program, and on February 21, 1998, the criminal charges against him were dismissed. *See id.* and A.28.

A conviction for a controlled substance crime, or a preponderance of evidence that a person has committed an act that meets the definition of a controlled substance crime, results in a 15-year disqualification. *See* Minn. Stat. §§ 245C.14, subd. 1(a)(2), and

245C.15, subd. 2(a) (2008). After determining that there was a preponderance of evidence that Relator committed an act that met the definition of a third degree controlled substance crime, DHS notified Relator that he was disqualified and that he could request reconsideration from the Department. *See Rel. App. at A.1 and 2.*

**C. The Commissioner's Reconsiderations of Relator's Disqualification.**

Requests for reconsideration involving facilities licensed by the Department are reviewed by the Commissioner of Health. *See Minn. Stat. § 144.057, subd. 3 (2008).* Relator requested reconsideration in a letter to the Department dated January 26, 2009. *See Rel. App. at A.23.* When the Commissioner receives a request for reconsideration, she reviews the request to determine 1) whether the underlying information is correct, and 2) whether the person presents a risk of harm to persons served by the program or facility.<sup>3</sup> *See Minn. Stat. § 245C.22, subs. 2 and 4 (2008).*

On April 30, 2009, the Commissioner sent Relator written notice that Relator's disqualification had been set aside. *See Rel. App. at A.41.* On May 27, 2009, Relator sent a letter to the Department seeking clarification of the decision. *See Rel. App. at A.42.* Stella French, Director of the Office of Health Facility Complaints, sent Relator's counsel a letter on June 4, 2009, noting that he could assume the correctness of the disqualification had been considered and that Relator did not have a right to a hearing. *See Rel. App. at A.44.*

---

<sup>3</sup> In this case, the Commissioner acted through her delegate, the Appeals Coordinator at the Department.

By writ of certiorari filed with this Court on June 12, 2009, Relator appealed the Commissioner's decision.

### SCOPE OF REVIEW

Relator's certiorari appeal is before this Court pursuant to Minn. Stat. § 480A.06, subd. 3 (2008), and Minn. Stat. ch. 606 (2008). See *Rodne v. Comm'r of Human Servs.*, 547 N.W.2d 440, 444 (Minn. Ct. App. 1996). A decision concerning a request for reconsideration of a disqualification is a quasi-judicial decision. *Id.* at 444-45. An appellate court "may reverse an administrative decision if it is not supported by substantial evidence on the record or is arbitrary and capricious." *Sweet v. Comm'r of Human Servs.*, 702 N.W.2d 314, 318 (Minn. Ct. App. 2005) *rev. denied* (Nov. 15, 2005)).

Under the substantial evidence standard, the agency's decision will be upheld unless Relator can show that the decision is not supported by evidence that a reasonable mind, considering the record in its entirety, might accept as adequate to support the Commissioner's conclusion. See *Reserve Mining Co. v. Herbst*, 256 N.W.2d 808, 825 (Minn. 1977). "Substantial evidence" is defined as:

1. [s]uch relevant evidence as a reasonable mind would accept as adequate to support a conclusion; 2. [m]ore than a scintilla of evidence; 3. [m]ore than some evidence; 4. [m]ore than any evidence; and 5. [e]vidence considered in its entirety.

*Sweet*, 702 N.W.2d at 318 (quoting *White v. Minnesota Dep't of Natural Res.*, 567 N.W.2d 724, 730 (Minn. Ct. App. 1997), *rev. denied* (Minn. Oct. 31, 1997)).

In addition, when considering the appeal of the agency decision, deference should be given to the Commissioner's expertise in administering and enforcing the

disqualification statutes. As the Minnesota Supreme Court stated in *In re Excess Surplus Status of Blue Cross and Blue Shield of Minnesota* (hereinafter “*Blue Cross*”), 624 N.W.2d 264, 278 (Minn. 2001):

When reviewing agency decisions we “adhere to the fundamental concept that decisions of administrative agencies enjoy a presumption of correctness, and deference should be shown by courts to the agency’s expertise and their special knowledge in the field of their technical training, education, and experience.” [Citation omitted.] The agency decision maker is presumed to have the expertise necessary to decide technical matters within the scope of the agency’s authority, [citation omitted] and judicial deference, rooted in the separation of powers doctrine, [footnote omitted] is extended to an agency decision maker in the interpretation of the statutes that the agency is charged with administering and enforcing. [Citation omitted.]

Moreover, an agency’s conclusions are only arbitrary and capricious only if “there is no rational connection between the facts and the agency decision.” *Sweet*, 702 N.W.2d at 318 (citing *Blue Cross*, 624 N.W.2d at 277).

The Commissioner’s refusal to hold a hearing on the correctness of Relator’s disqualification is supported by substantial evidence in the record and by applicable law and is not arbitrary or capricious.

## **ARGUMENT**

### **I. SUBSTANTIAL EVIDENCE SUPPORTS THE DEPARTMENT’S DECISION.**

The Department is required by statute to review and decide reconsideration requests in accordance with the criteria contained in Minn. Stat. § 245C.22 (2008). When an individual requests that the Commissioner reconsider the correctness or accuracy of the information, the Commissioner must rescind the disqualification if the Commissioner

finds that the information relied upon to disqualify the individual was incorrect. *See* Minn. Stat. § 245C.22, subd. 2 (2008).

As the discussion below demonstrates, Relator failed to present any information showing that DHS relied on incorrect information in disqualifying Relator. In addition, based upon the record before the Department, and considering the information that Relator provided with respect to risk of harm, the Department properly applied the statutory criteria in deciding that Relator *did not* pose a risk of harm, and set aside his disqualification. *See* Rel. App. at A.41

**A. Relator’s Disqualification Was Based On Correct Information.**

In his request for reconsideration, Relator did not offer any evidence to rebut the information contained in the DHS disqualification letter. *See* Rel. App. at A.23. Instead, he offered conclusory statements that “relying on 12-year-old police reports does not constitute a preponderance of evidence,” and that the “(p)olice reports are not sworn statements and as such are inherently unreliable.” *See id.* Relator also admitted, in his request for reconsideration, “that in the past he had issues with substance abuse. . . .” *See id.* Relator cites no authority to support his position that a police report that is not signed, or is not a sworn statement, is inherently unreliable and does not constitute substantial evidence.

Relator argues that MDH relied on old police reports, including allegations from an unnamed informant, and requests that this Court “conclude that these unsigned, uncertified police reports, without additional evidence, do not constitute ‘substantial evidence.’” *See* Relator’s Brief at 13. That argument fails for several reasons. First,

Relator challenges the nature of the evidence, noting “MDH relied exclusively on old police reports” that contain information “from an unnamed informant.” *See* Relator’s Brief at 13. Those challenges are not persuasive. The age of the police reports does not affect the correctness of the information contained in the reports. In addition, the informant was not anonymous, but instead was described as a “confidential reliable informant” or “CRI” in the police report. *See* Rel. App. at A.13. Courts frequently rely on CRIs in determining whether there is probable cause to issue of a search warrant. One factor for determining whether a CRI is reliable is if the police corroborate the CRI’s information. *See State v. Ross*, 676 N.W.2d 301 (Minn. Ct. App. 2004). In this case the police corroborated the CRI’s report by finding drugs nearby when they arrested Relator. Specifically the police recovered a baggie containing 4.8 grams of cocaine at the scene, (Rel. App. at A.15) that Officer Graff saw Relator throw on the ground as he was fleeing police. *See* Rel. App. at A.14. Accordingly, the police report does not consist merely of a statement from an unnamed informant, but also includes the recorded observations of a named police officer who recovered a significant amount of cocaine. Relator does not deny that the events described in the police report are true and provided no evidence that the information relied upon to disqualify him was inaccurate.

Second, the Department relied on court records as well as police reports, and the court records show that, although the criminal charges against Relator were ultimately dismissed, Relator entered a drug diversion program as a result of the charges. *See* Rel. App. at A.4. Such a disposition avoids an adjudication of guilt for purposes of the criminal proceeding, but does not mean that the arrest was based upon incorrect

information. *See* Minn. Stat. § 152.18. Rather, the drug diversion program gives first time drug offenders an “opportunity to attend and participate in an appropriate program of education regarding the nature and effects of alcohol and drug abuse as a stipulation of probation.” *See id.* Had Relator wished to challenge the information contained in the police report, he could have done so when criminal charges were filed against him in 1995.

Finally, Relator fails to recognize that hearsay evidence is admissible at a fair hearing. (“The appeals referee shall accept all evidence, except evidence privileged by law, that is commonly accepted by reasonable people in the conduct of their affairs as having probative value on the issues to be addressed at the hearing.”) *See* Minn. Stat. § 256.0451, subd. 19 (2008). Thus the law specifically allows the Department to rely on the type of records the Department reviewed in this case.

**B. Mitigating Factors Do Not Change Relator’s Disqualification.**

Relator mistakenly suggests that the Department must review the “mitigating circumstances” to determine “the severity of the alleged offense level.” *See* Relator’s Brief at 14. Respondent relies on the unpublished decision by this Court in *Dobie v. Ludeman*, No. A08-1546 (Minn. Ct. App. June 16, 2009) in making this argument. The instant case is distinguished from *Dobie* both by the facts, and by the relevant law. First, in *Dobie* the individual challenging the disqualification had not been charged with a crime and the preponderance of evidence finding by DHS in that case involved second degree assault. In this case Relator was charged with a felony, third degree controlled substance crime. *See* Rel. App. at A.4.

Second, in *Dobie*, the same offense, second degree assault, could result in a permanent disqualification, a ten-year disqualification, or a seven-year disqualification, depending on the level of severity of the presumed offense. *See* Minn. Stat. § 245C.15, subds. 1, 3 and 4. In the instant case, violations of Minn. Stat. ch. 152 result in a 15-year disqualification. *See* Minn. Stat. § 245C.15, subd. 2(a). Accordingly, there is no need to review the level of offense involved in Relator's situation to determine the severity of the acts because a violation of Chapter 152 results in a 15-year disqualification. *See* Minn. Stat. § 245C.15, subd. 2(a) (2008).

## **II. THE BACKGROUND STUDY LAW DOES NOT REQUIRE A HEARING WHEN A SET ASIDE IS GRANTED.**

Relator argues that he is entitled to a fair hearing. Chapter 245C does not require a fair hearing at this point because Relator's disqualification was set aside. *See* Minn. Stat. § 245C.27, subd. 1.

### **A. The Relevant Law Clearly Shows That No Hearing is Required When a Set Aside is Granted.**

The general fair hearing statute, Minn. Stat. § 256.045, subd. 3(a)(10), provides that a person who has been disqualified has a right to a fair hearing, unless otherwise provided in ch. 245C. Chapter 245C contains numerous provisions which are exceptions to the general grant of a fair hearing under Minn. Stat. § 256.045, subdivision 3(a)(10), which are limitations on the scope of the fair hearing. Specifically:

- Minn. Stat. § 245C.27, subdivision 1(a) grants a fair hearing right to a person whose disqualification *was not set aside* if the disqualification was based on serious or recurring maltreatment, or a preponderance of evidence of a disqualifying crime, or failure to make required maltreatment reports. (emphasis added)

- Minn. Stat. § 245C.27, subdivision 1(c) denies a fair hearing right to a person whose disqualification was based solely on a conviction or admission of a disqualifying crime.
- Minn. Stat. § 245C.27, subdivision 1(d) denies a fair hearing right to disqualified public employees because they are instead granted a contested case hearing right under section 245C.28, subdivision 3(a) if their disqualification was not set aside,
- Minn. Stat. § 245C.27, subdivision 1(e) grants a fair hearing right to a person whose disqualification was not set aside if it was based on both a preponderance of evidence of a crime and a conviction or admission to a crime. However, the scope of the hearing for the conviction/admission portion of the disqualification is limited solely to the issue of whether the person is a risk of harm.
- Minn. Stat. § 245C.27, subdivision 2(a) grants a consolidated fair hearing right to a person whose disqualification for serious or recurring maltreatment was not set aside, to address both the maltreatment determination and the disqualification.
- Minn. Stat. § 245C.27, subdivision 2(c) denies a consolidated fair hearing right to disqualified public employees because they are instead granted a consolidated contested case hearing right under section 245C.28, subdivision 3(b), to address both the maltreatment determination and the disqualification if their disqualification was not set aside.
- Minn. Stat. § 245C.28, subdivision 3 grants a contested case hearing to public employees whose disqualification was not set aside.
- Minn. Stat. § 245C.29, subdivision 2, when read in conjunction with section 245C.27, subdivision 1(a), denies a fair hearing right to a person whose disqualification was not set aside because the commissioner's determination on a disqualification is deemed conclusive if the person: (1) did not request reconsideration of the disqualification; (2) did not request a hearing on the disqualification; or (3) appealed the disqualification and the commissioner has issued a final order following the appeal.

Minnesota Statute Section 245C.27, Subdivision 1(a), is the most significant provision described above because it narrows the class of disqualified persons entitled to

a fair hearing to only those persons whose disqualification was not set aside, and persons whose disqualification was for maltreatment, preponderance of evidence, or failure to report maltreatment. The remaining provisions described above are further limitations on the hearing right within the class of persons whose disqualifications were not set aside. Accordingly, a plain reading of Minn. Stat. § 245C.27, subd. 1(a), is that the fair hearing right stems from a decision to *not* set aside the disqualification, and that any other disposition of the disqualification, such as granting a set aside (as occurred in the instant case) or rescinding the disqualification, is not subject to a fair hearing. Otherwise, the word “not” in “not set aside” has no meaning. *See* Minn. Stat. § 245C.27, subd. 1(a) (2008).

**B. Every Law Shall Be Construed, If Possible, to Give Effect to All of Its Provisions.**

To the extent there is any ambiguity in Minn. Stat. § 245C.27, subd. 1(a), the canons of statutory construction under Minn. Stat. ch. 645 must be used to determine legislative intent. Multiple rules of statutory construction support the Department’s interpretation of the statute.

Under Minn. Stat. § 645.16, every law must be construed, if possible, to give effect to all of its provisions. Minn. Stat. § 256.045, subd. 3(a), is a general statute which provides a fair hearing right to certain persons as a result of various state actions. With regard to a person who is disqualified, the statute provides a fair hearing right as follows:

(10) except as provided under chapter 245C, an individual disqualified under sections 245C.14 and 245C.15, on the basis of serious or recurring maltreatment; a preponderance of the evidence that the individual has committed an act or acts that meet the definition of any of the crimes listed

in section 245C.15, subdivisions 1 to 4; or for failing to make reports required under section 626.556, subdivision 3, or 626.557, subdivision 3. Hearings regarding a maltreatment determination under clause (4) or (9) and a disqualification under this clause in which the basis for a disqualification is serious or recurring maltreatment, *which has not been set aside* under sections 245C.22 and 245C.23, shall be consolidated into a single fair hearing. In such cases, the scope of review by the human services referee shall include both the maltreatment determination and the disqualification . . .

Minn. Stat. § 256.045, subd. 3(a) (emphasis added).

Section 245C.27, Subdivision 1(a), is a specific statute which provides a fair hearing right for a disqualified person as follows:

If the commissioner *does not set aside* a disqualification of an individual under section 245C.22 who is disqualified on the basis of a preponderance of evidence that the individual committed an act or acts that meet the definition of any of the crimes listed in section 245C.15; for a determination under section 626.556 or 626.557 of substantiated maltreatment that was serious or recurring under section 245C.15; or for failure to make required reports under section 626.556, subdivision 3; or 626.557, subdivision 3, pursuant to section 245C.15, subdivision 4, paragraph (b), clause (1), the individual may request a fair hearing under section 256.045, unless the disqualification is deemed conclusive under section 245C.29.

Minn. Stat. § 245C.27, subd. 1(a) (emphasis added).

Both the Background Study Law (Minn. Stat. § 245C.27, subd. 1(a)) and the Fair Hearing Law (Minn. Stat. § 256.045, subd. 3(a)(10)), note that only disqualifications that *have not been set aside* are entitled to a fair hearing. Accordingly, Minn. Stat. § 256.045, subd. 3(a), grants a fair hearing to disqualified persons except as provided under ch. 245C. To construe Minn. Stat. § 245C.27, subd. 1(a), to grant a hearing to persons whose disqualification is set aside would render the “except as provided under ch. 245C” and the “not set aside” language in Minn. Stat. § 256.045, subd. 3(a)(10), superfluous.

**C. Section 245C.27, Subdivision 1(A), Was Amended to Clarify the Original Legislative Intent to Provide a Hearing Right Only When the Disqualification Is Not Set Aside.**

Minnesota Statutes Section 645.26, Subdivision 4, provides that when the provisions of two or more laws passed at different sessions of the legislature are irreconcilable, the law latest in date of final enactment shall prevail. In this case, the two statutes on their face are not irreconcilable. However, to the extent that they are, Minn. Stat. § 245C.27, subd. 1(a), prevails because it is more recent, having been amended in 2005. *See* 2005 Minnesota Laws, 1st Special Session, chapter 4, article 1, section 41. That amendment clarifies the original legislative intent to only provide a fair hearing to persons whose disqualification was not set aside. Prior to 2005, Minn. Stat. § 245C.27, subd. 1(a), granted a fair hearing right to person whose disqualification was not set aside or rescinded. As a result, occasionally a disqualified person would request a hearing when their disqualification was set aside, on the grounds that their disqualification was not rescinded. Minn. Stat. § 245C.27, subd. 1(a), was amended to delete the “rescinded” language, thereby making it clear that a person whose disqualification was set aside was not entitled to a fair hearing.

To the extent that the Court finds Minn. Stat. §§ 245C.27, subd. 1(a) and 256.045, subd. 3(a)(10), irreconcilable, another canon of statutory construction provides that the more specific law, Minn. Stat. § 245C.27, subd. 1(a), controls the more general fair hearing law. *See* Minn. Stat. § 645.26, subd. 1 (2008).

**D. Relator Is Not An Aggrieved Party Under The Law.**

Relator has not been injured or adversely affected by the action of the Department, and thus is not an aggrieved party for purposes of the law. *See In re Getsug*, 186 N.W.2d 686, 689 (Minn. 1971); *see also In re Black*, 522 N.W.2d 352, 355 (Minn. Ct. App. 1994). Relator argues that he has been injured because his property right, in the form of his ability to obtain a job, and his good name, have been harmed. *See* Relator's Brief at 6. In fact the Department's action, setting aside Relator's disqualification, gave him the right to work in the position that he had requested. Accordingly, rather than denying Relator any property right in employment, the Department's action *allows* Relator to be employed in the setting of his choosing.

To the extent that Relator claims his reputation has been harmed, the Department did not cause that harm. The fact that Relator was arrested and charged with felony possession of a controlled substance is a matter of public record, and it is disingenuous to argue that the Department harmed Relator's reputation by merely acting on public information when it set aside his disqualification.

**III. THE BACKGROUND STUDY LAW IS CONSTITUTIONAL.**

The constitutionality of a statute is a question of law which this court reviews *de novo*. *See Sweet v. Comm'r of Human Serv.*, 702 N.W.2d 314, 319 (Minn. Ct. App. 2005). Minnesota Statutes are presumed constitutional, and the power to declare statutes unconstitutional should be exercised with extreme caution and only when absolutely necessary. *See Associated Builders and Contractors v. Ventura*, 610 N.W.2d 293, 298-99, (Minn. 2000); *In re Haggerty*, 448 N.W.2d 363, 364 (Minn. 1989).

Relator's constitutional rights were not violated. As is discussed below, he was not denied due process because his disqualification was based upon correct information and he was provided a meaningful opportunity to challenge that disqualification. His disqualification also complies with the State Constitutional protection of equal protection because it is rationally related to the legitimate state interest of protecting the safety of Minnesota's most vulnerable populations, and Relator has not shown that he was treated differently than a similarly situated person.

**A. Application of Minn. Stat. § 245C.27, Subd. 1(c), Did Not Deprive Relator Of Due Process.**

Relator erroneously contends that he has been deprived of due process guaranteed by the Minnesota Constitution because the background study law does not provide for a evidentiary hearing when his disqualification was set aside. Relator's Brief at 4. In this case, however, no evidentiary hearing was required. "Procedural due process protections restrain government action which deprives individuals of 'liberty' or 'property' interests within the meaning of the due process clause of . . . article 1, section 7 of the Minnesota Constitution." *See Humenansky v. Minn. Bd. of Med. Examiners*, 525 N.W.2d 559, 565 (Minn. Ct. App. 1994), *rev. denied* (Minn. Feb. 14, 1995). A balancing test is used to determine if an individual's right to procedural due process is violated. *See Mathews v. Eldridge*, 424 U.S. 319, 332 (1976). As discussed below, when the *Mathews* standard is applied to the facts of this case, Relator's due process challenge to Minn. Stat. § 245C.27, subd. 1(c), fails because Relator was provided with due process.

**1. This Court has upheld the background study law from a due process challenge.**

Relator's procedural due process challenge to Minn. Stat. § 245C.27, subd. 1(c), is not a case of first impression in this Court. The statute was upheld against a procedural due process challenge in *Sweet v. Comm'r. of Human Servs.*, 702 N.W.2d 314 (Minn. Ct. App. 2005). As the discussion below demonstrates, the principles announced in *Sweet* are applicable to the arguments raised by Relator, and, as occurred in *Sweet*, Relator's due process challenge should be rejected by the Court.

In *Sweet*, a DHS background study revealed that Mr. Sweet had been convicted of crimes listed in Minn. Stat. § 245C.15 (i.e., disqualifying crimes). *See* 702 N.W.2d at 316. As a result, DHS notified Mr. Sweet that he was disqualified from his counseling job at a drug and alcohol counseling service. *See id.* Mr. Sweet submitted a written request for reconsideration and, according to § 245C.27, subd. 1(c), was given no opportunity to request an evidentiary hearing on DHS' decision refusing to set aside his disqualification. *See id.* at 316-17. On appeal to this Court, Mr. Sweet challenged the constitutionality of § 245C.27, subd. 1(c).

In rejecting Mr. Sweet's procedural due process challenge, the Court's first step was to determine whether Mr. Sweet had a property interest in his ability to pursue employment as a counselor in state-licensed programs. *See Sweet*, 702 N.W.2d at 320. The Court's next step was to employ the three-factor balancing test set forth in *Mathews v. Eldridge*, 424 U.S. 319, 322, 335 (1976), and quoted in *Fosselman v. Comm'r of Human Servs.*, 612 N.W.2d 456, 462 (Minn. Ct. App. 2000). The factors that

must be balanced are: (1) the property interest at stake; (2) the risk of an erroneous deprivation of such interest through the procedures used; and (3) the burden on the government that additional procedural requirements would entail. *See id.*

The Court found that, as to the first *Mathews* factor, Mr. Sweet had a property interest in his ability to pursue employment as a counselor in state-licensed programs and that this interest weighed heavily in his favor. *See Sweet*, 702 N.W.2d at 320. The Court determined, however, that the second factor (the risk of erroneous deprivation) weighed in favor of DHS. The Court found the following items to be significant in its analysis: (1) that Mr. Sweet had the burden of proof under Minn. Stat. § 245C.22, subd. 4, to show that he is not disqualified by the statutory criteria and that he does not pose a risk of harm; (2) that Mr. Sweet “had the unfettered right to present all evidence, including letters of support, that he thought the Commissioner should consider in his written submission”; and (3) that the agency presented no controverted testimony, and thus a hearing was not necessary to permit cross-examination of witnesses. *See* 702 N.W.2d at 321. The Court stated:

Based on this record, we discern no likely value to an evidentiary hearing. Whether the case is presented orally or in writing to the commissioner, Relator would submit the same evidence. Therefore, we conclude that allowing the appellant to file written submissions provided appellant with an adequate opportunity to present his case. Secondly, we also conclude that the potential risk of an erroneous decision is the same under either procedure. The commissioner is required to review and analyze Relator’s evidence regardless of the format in which it is presented.

*Id.*

Finally, as to the third *Mathews* factor (the burden on the government of requiring more process), the Court in *Sweet* found that the government's interests weighed in favor of the Commissioner. The Court stated:

[T]he governmental interest in protecting the public, especially vulnerable individuals is of paramount importance. Minn. Stat. § 245C.22, subd. 3. The government also has an interest in saving time and money by considering disqualifications quickly and efficiently, without the additional time, expenses, and personnel required to provide evidentiary hearings to disqualified individuals. If an individual disqualified for criminal convictions were due an oral evidentiary hearing, the commissioner would need to hold one on the same issue every time the same individual was hired or re-hired by a state-licensed program.

*See Sweet*, 702 N.W.2d at 321-22. After considering all three factors, the Court concluded that “an evidentiary hearing was not required to afford Relator with procedural due process, providing Relator with the right to submit evidence in writing was adequate to meet the requirements of due process.” *See id.* at 322. The Court held that the statutory language in Minn. Stat. § 245C.27, subd 1(c), “is not unconstitutional on its face or as applied to Relator.” *See id.* As described below, Minn. Stat. § 245C.27, subd. 1(c), is not unconstitutional as applied to Relator.

## **2. The State provided due process to Relator.**

An analysis of the *Mathews* factors in the instant case demonstrates that Relator was provided with due process. First, as to Relator's property interest, the State recognizes that Relator has a property interest in his ability to pursue employment. Indeed, the Department set aside Relator's disqualification, thus allowing him to work in his chosen profession. Accordingly, this factor is neutral.

The second *Mathews* factor, whether there was an erroneous deprivation due to the procedures used, weighs in favor of the Department. First, Relator was given the opportunity to present written evidence on the issue of correctness. *See* Rel. App. at 1-2. Specifically, DHS invited Relator to submit evidence on the correctness of the underlying disqualifying characteristic, but Relator did not do so. Instead he submitted evidence on risk of harm and made conclusory statements about old, unsigned police reports being unreliable. *See* Rel. App. at 23-31. That is not a sufficient showing by Relator that the information used to disqualify him was incorrect. As the Court noted in *Sweet*, Relator has the burden of proof under Minn. Stat. § 245C.22, subd. 4, to show that he should not be disqualified and, he had “the unfettered right to present all evidence, including letters of support, that he thought the commissioner to consider. . . .” There was “no controverted testimony” which would require a hearing to allow cross-examination of witnesses. *See Sweet*, 702 N.W.2d 321. Significantly, Relator does not argue that the Department’s decision was based upon incorrect information.

Second, the Department reviewed Relator’s request for reconsideration and set aside his disqualification, allowing him to work in the position he requested. Rel. App. at A.14.<sup>4</sup> Contrary to Relator’s assertion that there has been an erroneous deprivation of his property interest (Relator’s Brief at 8), the record shows that the disqualification was based upon correct information. *See* Rel. App. at A.4-18. The record also shows that

---

<sup>4</sup> Relator states that the Commissioner was to act on his request within 45 days but took over 90 days. The law provides that decisions on correctness must be made within “45 *working* days after receiving the request.” *See* Minn. Stat. § 245C.22, subd. 1(c) (2008). (emphasis added) The Commissioner received the request on January 30, 2009 (*see* Rel. App. at A.23), and thus had until April 6, 2009 to act on Relator’s request.

Relator's disqualification was set aside and he was allowed to work. *See* Rel. App. at A.41.

Third, Relator had the opportunity to challenge the criminal charges that were filed against him in 1995, but instead chose to go through the drug diversion program. Accordingly, the Court's conclusion in *Sweet*, that "Relator has already been afforded the full panoply of rights in the criminal proceeding . . ." (*Sweet*, 702 N.W.2d at 321), applies to the instant case and weighs in favor of the statutorily required process used by the Department.

As to the third *Mathews* factor, the burden that additional process would impose on the government, Relator wrongly suggests that the Department would not incur additional expense or administrative burden because it reviewed Relator's request and set aside his disqualification and because the Department already has elaborate procedures in place to conduct such hearings. *See* Relator's Brief at 11. In fact, allowing fair hearings when a set aside has already been granted would clearly increase the number of hearings held, and, correspondingly, would increase costs. The number of appeals would increase dramatically, thereby impacting the resources of the DHS Appeals and Regulations Division (because of the increased caseload of all the human services judges), as well as the DHS Licensing Division and MDH (because the decision makers would need to testify at all the hearings). Accordingly, this factor weighs in favor of the Department.

In applying the *Mathews* factors as described in *Sweet*, it is clear that Relator received adequate process, and thus his due process challenge fails. The procedural due process that was afforded Relator under the Background Study Law ensured that Relator

was given a “meaningful opportunity to present [his] case.” *See Mathews*, 424 U.S. at 349. Relator has not met his heavy burden of showing that Minn. Stat. § 245C.27, subd. 1(c), is unconstitutional “beyond a reasonable doubt.” *See Sweet*, 702 N.W.2d at 219 (challenger must show statute is unconstitutional beyond a reasonable doubt). Accordingly, Relator’s procedural due process argument fails.

**B. Equal Protection Was Not Violated.**

**1. Relator fails to show that he is similarly situated to others who may be treated differently.**

Equal protection analysis begins with the mandate that all similarly situated individuals must be treated alike unless there is a sufficient basis for distinguishing among them. *See Greene v. Comm’r of Dept. of Human Services*, 755 N.W.2d 713, 725 (Minn. 2008). Whether individuals are similarly situated is a dispositive issue in cases involving equal protection claims. *See Lundberg v. Jeep Corp.*, 582 N.W.2d 268, 272 (Minn. Ct. App. 1998); *State ex rel. Spannas v. Lutsen Resorts, Inc.*, 310 N.W.2d 495, 497 (Minn. 1981) (a finding that disparately treated persons are similarly situated is “essential” to an equal protection ruling).

Relator fails to meet this threshold requirement. He has not shown that he is similarly situated to others who are treated differently. The Background Study Law requires studies on everyone who wishes to work in certain facilities or programs. By failing to establish this threshold element, Relator fails to make a case under *any* standard of review.

Relator posits that “If MDH does not review all non-convictions . . . that involve allegations of drug use, then it violated” Relator’s right to equal protection. *See* Relator’s Brief at 15. Relator does not present *any* evidence to show that MDH treats similarly situated individuals differently, he just suggests a series of possibilities, and states that if that series of events occurred, then his rights have been violated. *Id.* That argument fails because the burden of proof is on Relator to show beyond a reasonable doubt that the statute violates a constitutional right. *See Gluba ex rel. Gluba v. Bitzen & Ohren Masonry*, 735 N.W.2d 713, 719 (Minn. 2007). Relator has not shown that he is treated differently than similarly situated individuals.

First, the law does not treat individuals differently depending on the type of drug or drug-related crime at issue, it simply states that a violation of Chapter 152, or a felony-based conviction involving alcohol or drug use, results in a 15-year disqualification. *See* Minn. Stat. § 245C.15, subd. 2(a). Further, Minn. Stat. § 245C.14, subd. 1(a)(2), provides that a person is disqualified if there is a preponderance of the evidence that he has committed an act that meets the definition of a crime listed at Minn. Stat. § 245C.15, “regardless of whether the preponderance of the evidence is for a felony, gross misdemeanor, or misdemeanor level crime.”

Second, Relator has not established that he is similarly situated to individuals whose disqualifying conduct does not fall under Minn. Stat. § 245C.15, subd. 2(a). He merely notes that “since there was no fair hearing to ask MDH how it enforces the preponderance of evidence law, there is no proof that MDH applies the law equally to all similarly situated individuals.” Relator’s Brief at 16. Relator does not apply the law

correctly. A law is presumed to be constitutional until it is shown beyond a reasonable doubt to be unconstitutional. *See Unity Church of St. Paul v. State*, 694 N.W.2d 585, 591 (Minn. Ct. App. 2005), *rev. dismissed* (Minn. June 9, 2005). Again, Relator has not met the threshold requirement of demonstrating that he is similarly situated to a group that is treated differently.

**2. Rational basis is the appropriate level of scrutiny for Relator's equal protection challenge.**

This Court has said that the disqualification scheme of the Background Study Law is reviewed under the rational basis standard. *See Murphy v. DHS*, 765 N.W.2d 100 (Minn. Ct. App. 2009). Relator agrees that the rational basis test is the appropriate level of scrutiny of his equal protection claim. *See Relator's Brief* at 16. The Minnesota rational basis test requires that there is "(1) a legitimate purpose for the challenged law, and (2) that it is reasonable for the Legislature to believe that use of the challenged classification would promote the legitimate purpose. *See State v. Russell*, 477 N.W.2d 886, 888 (Minn. 1991) (quotation omitted). This Court has recognized that the overarching purpose of the Background Study Law is "to protect children and vulnerable adults who are served by licensed facilities," and to achieve that purpose by "identifying and disqualifying individuals whose past behavior suggests that placing them in direct contact with children or vulnerable adults poses an unacceptable risk of harm." *See Murphy*, 765 N.W.2d at 106. Clearly then, the Background Study Law meets the first part of the rational basis test because it has a legitimate purpose.

3. **The disqualification of an individual who has committed an act for which there is a preponderance of evidence it was one of the crimes listed in the law is rationally related to the state's legitimate interest in protecting vulnerable individuals.**

The Background Study Law meets the second part of the rational basis test because the classification at issue is one that the legislature could reasonably believe would promote the legitimate state interest of protecting the safety of our state's most vulnerable citizens. In the context of a due process challenge, this Court in *Sweet* determined that the Background Study Law purpose to protect the safety of vulnerable populations is of paramount importance. *See Sweet*, 702 N.W.2d at 321; *see also* Minn. Stat. § 245C.22, subd. 3, (declaring that the safety of vulnerable individuals served by a license holder must be given preeminent weight on a request for reconsideration of a disqualification). Minnesota has a legitimate purpose in protecting the safety of its most vulnerable citizens.

This Court may properly find that the Minnesota legislature reasonably believed that, to ensure the state's overall statutory scheme of protecting the safety of our most vulnerable individuals, it is appropriate to disqualify those individuals who have a history of certain criminal convictions, or who have committed an act for which there is a preponderance of evidence that the act contains the elements of a listed crime. The Background Study Law is a legitimate way to protect our most vulnerable individuals from potential caregivers known to have engaged in specific, unacceptable behavior. Consequently, a rational basis exists for the 15-year disqualification of those individuals

who, as shown by a preponderance of evidence, have committed an act that meets the definition of a crime listed at Minn. Stat. § 245C.15.

The Background Study Law mandates that an individual who has a history of controlled substance violations, regardless of whether there was an actual conviction for that crime, should not have direct contact with a vulnerable population. The distinction between those who unlawfully possess a controlled substance and those who do not unlawfully possess a controlled substance meets the rational basis test. This distinction is not “manifestly arbitrary or fanciful.” The law does, however, allow the Department to review the risk of harm presented by an individual with such a history, and, if appropriate, allow that person to work with a vulnerable population. Clearly the Background Study Law has established an appropriate procedure, carefully balancing the potential dangers to a vulnerable population and the rights of a caregiver, and that procedure is rationally related to a legitimate state interest. Accordingly, the Law does not violate Relator’s equal protection rights.

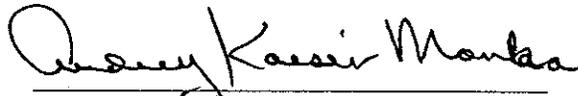
CONCLUSION

Based on the foregoing, the Department respectfully requests that this Court affirm the Commissioner's decision, granting Relator's request for a set aside of Relator's disqualification, but denying his request for a hearing.

Dated: September 1, 2009

Respectfully submitted,

LORI SWANSON  
Attorney General  
State of Minnesota



AUDREY KAISER MANKA  
Assistant Attorney General  
Atty. Reg. No. 0067179

445 Minnesota St., #1200  
St. Paul, MN 55101-2130  
(651) 297-5930

ATTORNEYS FOR RESPONDENT