

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS  
FOR THE MINNESOTA DEPARTMENT OF PUBLIC SAFETY

In the Matter of the License  
Revocation of Margo Lyn Langlie  
Instructor License No. 9096

**RECOMMENDED ORDER GRANTING  
LICENSEE'S MOTION FOR SUMMARY  
DISPOSITION**

This matter is pending before Administrative Law Judge Barbara L. Neilson based on a Notice and Order for Hearing issued by the Department of Public Safety, Office of Driver Education ("the Department") on September 14, 1999. The Department filed a Memorandum in Support of Revocation on November 15, 1999. The Licensee, Margo Lyn Langlie, filed a Memorandum in Opposition to the Department's motion on December 3, 1999. The record with respect to the motion remained open until January 19, 2000.

Michael R. Pahl, Assistant Attorney General, 525 Park Street, Suite 500, St. Paul, Minnesota 55103-2106, appeared on behalf of the Department. Troy Timmerman, Attorney at Law, Wendland Timmerman, P.A., 825 East Second Street, P.O. box 247, Blue Earth, Minnesota 56013, appeared on behalf of the Licensee.

Based upon all the files, records and the proceedings herein, and for the reasons set forth in the accompanying Memorandum,

IT IS HEREBY RECOMMENDED that:

1. The Department of Public Safety's motion for summary disposition be DENIED.
2. The Licensee's cross-motion for summary disposition be GRANTED.

Dated: February 18, 2000

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BARBARA L. NEILSON  
Administrative Law Judge

**NOTICE**

This recommended Order is not a final decision. The Commissioner of Public Safety will make the final decision after a review of the record. The Commissioner may adopt, reject, or modify the recommendation of the Administrative Law Judge. Pursuant to Minn. Stat. § 14.61, the final decision of the Commissioner shall not be made until this recommendation has been made available to the parties to the proceeding for at least ten days. An opportunity must be afforded to each party adversely affected by this recommendation to file exceptions and present argument to the Commissioner. The parties should contact the Commissioner of Public Safety, 1000 NCL Tower, 445

Minnesota Street, St. Paul, Minnesota 55101 (tel. (651) 296-6642) to ascertain the procedure for filing exceptions or presenting argument. Pursuant to Minn. Stat. § 14.62, subd. 1, the Agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail or as otherwise provided by law.

## MEMORANDUM

### Background

The issue presented in this contested case proceeding is whether the Department may revoke the Licensee's driver's education instructor's license because she has been convicted of the gross misdemeanor offense of unlawfully obtaining public assistance. After the Notice of and Order for Hearing was filed in this matter on September 20, 1999, counsel for the parties agreed that this case could appropriately be submitted for decision on motions for summary disposition, the Licensee's guilty plea should be admitted, and each party should be permitted to file briefs, affidavits, and other pertinent documentation. The Department thereafter filed a Memorandum in Support of Revocation of the Licensee's License, which was in the nature of a motion for summary disposition. The Licensee filed a Memorandum of Law in Opposition to Revocation, which was in the nature of a cross motion for summary disposition. Both parties submitted affidavits and other documentation in support of their positions in the case. The burden of proof is on the Department to demonstrate by a preponderance of the evidence that revocation of the Licensee's instructor license is appropriate.<sup>[1]</sup>

Summary disposition is the administrative equivalent of summary judgment. Summary disposition is appropriate where there is no genuine issue as to any material fact and one party is entitled to judgment as a matter of law.<sup>[2]</sup> The Office of Administrative Hearings has generally followed the summary judgment standards developed in judicial courts in considering motions for summary disposition regarding contested case matters.<sup>[3]</sup> A genuine issue is one that is not sham or frivolous. A material fact is a fact whose resolution will affect the result or outcome of the case.<sup>[4]</sup> The moving party has the initial burden of showing the absence of a genuine issue concerning any material fact. To successfully resist a motion for summary judgment, the nonmoving party must show that there are specific facts in dispute that have a bearing on the outcome of the case.<sup>[5]</sup> When considering a motion for summary judgment, the Court must view the facts in the light most favorable to the non-moving party.<sup>[6]</sup> If reasonable minds could differ as to the import of the evidence, judgment as a matter of law should not be granted.<sup>[7]</sup>

### Facts

It does not appear that there is any dispute regarding the underlying facts in this case. The Licensee is currently licensed by the Department as a commercial driving instructor. She applied for public assistance in September, 1996. In January of 1999, the Licensee was charged with the crimes of perjury and wrongfully obtaining public assistance. The charges stemmed from allegations that the Licensee failed to timely notify the County during the time she received public assistance that she had obtained employment. The County alleged that the Licensee ultimately received an overpayment of public assistance totaling \$5,301.93.

On June 30, 1999, the Licensee entered into a plea agreement under which the perjury charge was dismissed and the charge of wrongfully obtaining public assistance was reduced to a gross misdemeanor level. The Licensee entered a plea to the reduced charge on an *Alford* basis.<sup>[8]</sup> An *Alford* plea allows a trial court to “accept a plea of guilty by an accused even though the accused maintains that he or she is innocent, provided the plea is ‘voluntarily, knowingly, and understandingly entered,’ and provided the court first questions the accused, analyzes the facts offered in support of the plea, and concludes that the evidence would support a jury verdict of guilty.”<sup>[9]</sup> The Licensee was sentenced to six months in County jail, but the Court suspended the jail time and placed the Licensee on unsupervised probation for a period of two years on the condition that she pay restitution in the amount of \$5,301.93.<sup>[10]</sup> The Licensee paid the restitution and her probation was discharged prior to her leaving the courthouse that day.<sup>[11]</sup> The underlying guilty plea has not been vacated and her record has not been expunged.<sup>[12]</sup>

On August 3, 1999, the Department served the Licensee with notice of its proposed revocation of her instructor’s license. By letter dated August 12, 1999, the Licensee requested administrative review and a formal hearing. By letter dated August 25, 1999, the Department responded to the Licensee’s request for review and again determined that, due to the legislative change to Minn. Stat. § 364.09, a person who had been convicted of a gross misdemeanor is ineligible to hold a commercial driver training instructor license.

### **Applicable Statutes and Rules**

In 1974, the Legislature enacted the Offenders’ Rehabilitation Act, Minn. Stat. §§ 364.01 through 364.10. Under that Act, the Legislature declared it to be a policy of the State “to encourage and contribute to the rehabilitation of criminal offenders and to assist them in the resumption of the responsibilities of citizenship” and noted that the “opportunity to . . . engage in a meaningful and profitable trade, occupation, vocation, profession or business is essential to rehabilitation and the resumption of the responsibilities of citizenship.”<sup>[13]</sup> The Act generally provides that, “[n]otwithstanding any other provision of law to the contrary, no person shall be disqualified from public employment, nor shall a person be disqualified from pursuing, practicing, or engaging in any occupation for which a license is required solely or in part because of a prior conviction of a crime or crimes, unless the crime or crimes for which convicted directly relate to . . . the occupation for which the license is sought.”<sup>[14]</sup> In considering whether a conviction directly relates to the occupation for which the license is sought, the agency must consider the nature and seriousness of the crime, the relationship of the crime to the purposes of regulating the occupation, and the relationship of the crime to the “ability, capacity, and fitness required to perform the duties and discharge the responsibilities . . . of the occupation.”<sup>[15]</sup> The Act further requires that a person who has been convicted of a crime which directly relates to the occupation for which he or she seeks licensure “shall not be disqualified from the employment or occupation if the person can show competent evidence of sufficient rehabilitation and present fitness to perform . . . the occupation for which the license is sought,” such as a copy of the release or discharge order, evidence demonstrating that at least one year has elapsed

since release without additional criminal conviction, and evidence showing compliance with all terms and conditions of probation or parole.<sup>[16]</sup>

At the time of its enactment, the Offenders' Rehabilitation Act expressly did not apply to the licensing process for some occupations, such as attorneys and law enforcement officers, although the Minnesota Supreme Court and the Police and Peace Officers Training Board were not precluded from adopting the policies set forth in the statute.<sup>[17]</sup> Additional exceptions for other occupations were added to the statute during the following years. Prior to 1998, there was no mention in the statute of any exemption for commercial driver training instructor licenses.

On January 8, 1990, the Department of Public Safety proposed the adoption of various rules relating to driver training instructor licenses.<sup>[18]</sup> After a rulemaking hearing was held, the rules were adopted on May 7, 1990.<sup>[19]</sup> Under these rules, persons who have been convicted of a gross misdemeanor or felony are ineligible to be a commercial driver training instructor unless:

- A. the commissioner determines under Minnesota Statutes, section 364.03, subdivision 2, that the crime does not directly relate to the position of instructor; or
- B. the person has shown competent evidence of sufficient rehabilitation and present fitness to perform the duties of an instructor under Minnesota Statutes, section 364.03, subdivision 3.<sup>[20]</sup>

During the 1997 legislative session, the Legislature amended section 364.09(a) of the Offenders' Rehabilitation Act to provide that the Act did not apply "to eligibility for a commercial driver training instructor license, which is governed by section 171.35 and rules adopted under that section."<sup>[21]</sup> The amendment took effect on January 1, 1998. Minn. Stat. § 171.35 authorizes the Commissioner of Public Safety to adopt rules "governing the requirements for an instructor's license, which may include requirements concerning moral character, physical condition, knowledge of the courses of instruction and of motor vehicle laws and safety principles and practices, previous personnel and employment records, teaching experience and qualifications, and such other matters as the commissioner may prescribe . . . ." Following the amendment to the Offenders' Rehabilitation Act, the Commissioner did not adopt new rules relating to the treatment of criminal convictions, or modify or change its existing rules on this subject in any way.

## **Discussion**

The Department acknowledges that, before January 1, 1998, the Commissioner of Public Safety could not revoke the license of a driver's education instructor based solely upon a gross misdemeanor or felony conviction but was required under the applicable statute and rules to consider whether the crime involved was directly related to the driver instructor position and whether the person had shown sufficient rehabilitation and present fitness to perform the instructor's duties. Because the Offenders' Rehabilitation Act no longer applies to the licensing process for commercial driver training instructor, the Department argues that a gross misdemeanor conviction is now a *per se* disqualification from licensure as a driving instructor. The Department thus contends that the amendment to the Offenders' Rehabilitation Act "trumps" any

language in Minn. R. 7411.0610, subp. 7(A) and (B), to the contrary. The Department argues that any other interpretation would subvert the intent of the Legislature in amending Minn. Stat. § 364.09.

The Department filed an affidavit by Gerald C. Arvidson, a former driver education coordinator for the Department, in which he stated that the Department sought to make commercial driving instructors exempt from the rehabilitative requirements of Minn. Stat. § 364.03 “due to the sensitive nature of the position, which places minors under the control of an instructor, alone in an automobile, for several hours at a time.” According to Mr. Arvidson, the intent of the legislation amending Minn. Stat. § 364.09 “was to remove the subjective judgement on the part of licensing officials as to which offenses related to the position of instructor. It was the desire of the department to deny licensing applicants with gross misdemeanor or felony convictions, period.” He also indicated that this approach “would not preclude licensing those individuals with convictions whom had their criminal record expunged.” <sup>[22]</sup>

The Department further argues that, in any event, the offense of welfare fraud is related to the duties of a licensed instructor because those who defraud the government to obtain welfare may also defraud the government and place the public at risk by falsely certifying, or reporting to those who certify, that a student has taken required lessons. In addition, the Department contends that the Legislature has determined that evidence of rehabilitation is not to be considered but that the proper recourse instead is to seek to vacate the underlying guilty plea or to have the record expunged. There is no evidence that that has happened here.

In response, the Licensee asserts that the legislative changes made to Minn. Stat. § 364.09 do not mandate that a gross misdemeanor offense be considered an automatic bar to licensure as a commercial driving instructor. She contends that the statute merely states that the Department is not required to follow Chapter 364, but rather should follow its own rules in determining who is eligible for licensure and who is not. Under the administrative rule, the Licensee points out that the Department must consider whether the underlying criminal offense (welfare fraud) is related to the duties the Licensee performs as a licensed instructor, or whether she has presented sufficient evidence of rehabilitation. The Licensee argues that, until the Department amends its rules, it is required to follow them. Because those rules direct the Department to apply Minn. Stat. § 364.03, the Licensee contends that the Department must do so. The Licensee also asserts that Mr. Arvidson was not a member of the Legislature and his opinion of the “legislative intent” in enacting Minn. Stat. § 364.09 is irrelevant. In any event, the Licensee contends that the legislative history is of questionable value since the statute itself is not ambiguous.

When the rule and section 364.03 are applied to the present case, the Licensee argues that her criminal conviction should not bar her from licensure as a commercial driving instructor. The Licensee contends that the crime of which she was convicted was not serious and bears no relationship to her official duties as a driver’s education instructor or to her ability, capacity, or fitness to perform her occupation. The Licensee filed an affidavit of Bonnie Johnson, who is one of the managers of the driving school at which the Licensee is employed and supervises the Licensee in her employment. Ms. Johnson stated that the Licensee has been a very good instructor, she has no questions

about the Licensee's honesty or competence, and it would not be possible for the Licensee to fabricate test results. Ms. Johnson indicated that she does not believe that the Licensee poses a threat to her students or the driving school and urged that her license not be revoked. Letters from the Licensee's minister and Ms. Johnson and Dean P. Johnson (owners and managers of the driving school) supporting the Licensee's continued licensure were also filed by the Licensee.

The interpretation of statutes is a question of law.<sup>[23]</sup> The fundamental rule of statutory construction is that the court must first look to the specific language of the statute and be guided by the natural and most obvious meaning of that statute.<sup>[24]</sup> When the language of a statute is unambiguous, courts must apply the plain meaning of the statute.<sup>[25]</sup> Only when the wording of a statute is not explicit may courts consider various other factors to construe the intent of the legislation.<sup>[26]</sup>

After careful consideration of the arguments made by the parties, the Administrative Law Judge has concluded that the amendment to the Offenders' Rehabilitation Act does not mandate that the Department consider a gross misdemeanor conviction to be a *per se* disqualification from licensure as a driving instructor. The amendment simply provides that the Offenders' Rehabilitation Act no longer applies to such licensure and states that such licensure is governed by Minn. Stat. § 171.35 (which, as noted above, gives the Department the authority to adopt rules governing the requirements for an instructor's license, including requirements concerning moral character of the instructor) and the rules adopted by the Department under that section. The amendment thus vests discretion in the Department to determine the circumstances under which a licensee with a criminal record will be able to continue his or her licensure as a commercial driver training instructor. If the Legislature had wished to require that a criminal conviction result in an automatic disqualification from licensure as a driver training instructor, it clearly could have done so. It did not use language to that effect in its amendment to the Act.

The portion of the Minnesota Statutes governing the interpretation of statutes provides that, "[w]hen the words of a law in their application to an existing situation are clear and free from all ambiguity, the letter of the law shall not be disregarded under the pretext of pursuing the spirit."<sup>[27]</sup> The language used in the amendment is not ambiguous, so there is no need to resort to an examination of the legislative history. Moreover, the Department's attempt to establish legislative intent by providing the affidavit of an individual who was not even a member of Legislature cannot be viewed as conclusive evidence of legislative intent. There is no persuasive evidence that Mr. Arvidson (or any other Departmental representatives, for that matter) discussed with members of the Legislature his hope to remove the need for a subjective judgment on the part of licensing officials as to which offenses related to the position of instructor or his desire to require the automatic denial of licensure to those with criminal records.<sup>[28]</sup> It would be inappropriate to use Mr. Arvidson's affidavit as a basis for revocation of the Licensee's license where, as here, the statute does not appear to be ambiguous on its face.

The rules adopted by the Department under Minn. Stat. § 171.35 include Minn. R. 7411.0610, subp. 7, which specifies that the Department will consider the relationship between the crime and the occupation and evidence of rehabilitation and

fitness to perform the duties of the occupation. Under that rule, the Department will not find an individual to be ineligible for licensure simply because of a conviction for a gross misdemeanor or felony if the crime does not directly relate to the position of instructor or the person has shown competent evidence of rehabilitation and fitness. Although Minn. R. 7411.0610, subp. 7, references the Offenders' Rehabilitation Act and was adopted at a time when the Act in fact applied to licensure for the instructor position, the Department has not taken action to amend or repeal the rule even though the statutory amendment became effective more than two years ago. The plain language of the statutory amendment gives the Department the authority to decide via rulemaking how to treat licensees with criminal convictions. The existing rule demonstrates that, in the view of the Department, it is appropriate to decide on a case-by-case basis what, if any, effect a conviction should have on licensure. The approach taken in the rule is not necessarily at odds with the statute, since the statute merely vests discretion in the Department to decide the impact of a conviction.

Accordingly, contrary to the view of the Department, it is concluded that the amendment to the Offenders' Rehabilitation Act does not mandate revocation of the license of an individual who has a criminal conviction, but merely makes the Department's rules on the subject controlling. The Administrative Law Judge thus has denied the Department's motion for summary disposition.

The remaining question is whether the Licensee has shown that the crime does not directly relate to the position of instructor or has shown competent evidence of sufficient rehabilitation and present fitness. The Department contends that the offense of welfare fraud is related to the duties of a licensed instructor because those who defraud the government to obtain welfare may also defraud the government and place the public at risk by falsely reporting or certifying that a student has taken required driving lessons.<sup>[29]</sup> The Licensee provided evidence from her employer that she has been a good, honest and competent instructor, it would not be possible for the Licensee to fabricate test results, and she does not pose a threat to her students or the driving school. The Department's speculative assertion about potential risk to the public is undermined by the evidence provided by the Licensee that the risk is not present under the particular circumstances of her employment. It is significant that the Licensee paid restitution before even leaving the courthouse on the day that she entered her guilty plea. It is concluded that the Licensee thus has shown that the crime of which she was convicted bears no relationship to her official duties as a driver's education instructor or to her ability, capacity, or fitness to perform that occupation. Under these circumstances, the Licensee has established that the crime is not directly related to the position of commercial driver's training instructor. The Licensee's cross motion for summary disposition thus is granted. In light of this ruling, it is unnecessary to consider the alternative issue of whether the Licensee has shown competent evidence of sufficient rehabilitation and present fitness to perform the duties of an instructor, in accordance with Minn. R. 7411.0610, subp. 7(B).

B.L.N.

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- <sup>[1]</sup> Pursuant to Minn. R. 1400.7300, subp. 5, the burden of proof in contested case proceedings is placed on the party proposing that certain action be taken, unless the substantive law provides a different burden or standard.
- <sup>[2]</sup> *Sauter v. Sauter*, 70 N.W.2d 351, 353 (Minn. 1995); *Louwagie v. Witco Chemical Corp.*, 378 N.W.2d 63, 66 (Minn. App. 1985); Minn. R. 1400.5500(K); Minn.R.Civ.P. 56.03.
- <sup>[3]</sup> See Minn. R. 1400.6600 (1998).
- <sup>[4]</sup> *Illinois Farmers Insurance Co. v. Tapemark Co.*, 273 N.W.2d 630, 634 (Minn. 1978); *Highland Chateau v. Minnesota Department of Public Welfare*, 356 N.W.2d 804, 808 (Minn. App. 1984).
- <sup>[5]</sup> *Thiele v. Stitch*, 425 N.W.2d 580, 583 (Minn. 1988); *Hunt v. IBM Mid America Employees Federal*, 384 N.W.2d 853, 855 (Minn. 1986).
- <sup>[6]</sup> *Ostendorf v. Kenyon*, 347 N.W.2d 834 (Minn. App. 1984).
- <sup>[7]</sup> *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 250-251 (1986).
- <sup>[8]</sup> Transcript of Plea at 2, 8, 9-10.
- <sup>[9]</sup> *Perkins v. State*, 559 N.W.2d 678, 682 n. 2 (Minn. 1997), citing *State v. Goulette*, 258 N.W.2d 758, 760 (Minn. 1977); see also *North Carolina v. Alford*, 400 U.S. 25 (1970).
- <sup>[10]</sup> Transcript of Plea at 12-14, 16.
- <sup>[11]</sup> Affidavit of Langlie, ¶¶ 1-2.
- <sup>[12]</sup> See Letter from Michael R. Pahl dated January 12, 2000.
- <sup>[13]</sup> Minn. Stat. § 364.01.
- <sup>[14]</sup> Minn. Stat. § 364.03, subd. 1.
- <sup>[15]</sup> Minn. Stat. § 364.03, subd. 2.
- <sup>[16]</sup> Minn. Stat. § 364.03, subd. 3.
- <sup>[17]</sup> Minn. Stat. §§ 364.08, 364.09 (1974).
- <sup>[18]</sup> 14 State Register 1755-72 (Jan. 8, 1990).
- <sup>[19]</sup> 14 State Register 2583 (May 7, 1990).
- <sup>[20]</sup> Minn. R. 7411.0610, subd. 7 (A) and (B).
- <sup>[21]</sup> See Laws 1997, 1<sup>st</sup> Sp., ch. 2, § 58.
- <sup>[22]</sup> Affidavit of Gerald C. Arvidson, appended to Department's Memorandum of Law in Support of Revocation.
- <sup>[23]</sup> *McClain v. Begley*, 465 N.W.2d 680 (Minn. 1991).

<sup>[24]</sup> *Heaslip v. Freeman*, 511 N.W.2d 21, 22 (Minn. App. 1994), *rev. denied* (Minn. Feb. 24, 1994), *citing Nadeau v. Austin Mutual Insurance*, 350 N.W.2d 368, 373 (Minn. 1984).

<sup>[25]</sup> Minn. Stat. § 645.16 (discussed *infra*); *see also Current Technology Concepts, Inc. v. Irie Enterprises, Inc.*, 530 N.W.2d 539 (Minn. 1995).

<sup>[26]</sup> Minn. Stat. § 645.16.

<sup>[27]</sup> *Id.*

<sup>[28]</sup> In addition, because the rules adopted by the Department in 1990 relating to this issue have never been changed, there is no indication that the Department in fact intended to take such an approach.

<sup>[29]</sup> The Department's further contention that the Legislature has determined that evidence of rehabilitation is not to be considered and that the Licensee's only recourse is to seek to vacate the underlying guilty plea or to have the record expunged is not persuasive in light of the actual language of the amendment which, as discussed above, simply defers to the Department to determine the appropriate treatment of criminal convictions.