

Northeast Lawyers Club
The Nuts and Bolts of Administrative Hearings before the
Ohio Bureau of Motor Vehicles

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Administrative Hearing Examiner for the
Ohio Department of Public Safety 2007-2014

1. Types of Hearings

- A. ***Security Suspension***: is imposed because an uninsured motorist involved in an auto accident can be held liable for damages as a result thereof. The liability extends to both the driver and owner of the vehicle with some exceptions. At the hearings it is best to have testimony from the driver and the owner of all vehicles involved in the accident. (O.R.C. 4509.101)
- B. ***Noncompliance Suspension***: this suspension is imposed because the driver could not show proof of insurance when they are cited for a moving violation or at the time of a traffic accident. (O.R.C. 4509.101)
- C. ***Random FRA Suspension***: this suspension is imposed because the registered owner of a vehicle could not show proof of insurance when randomly selected by the Registrar to show proof. These suspensions are only heard in Columbus because the code requires a hearing within 30 days. (O.R.C. 4509.101)
- D. ***Medical Suspension***: this suspension occurs when the driver is suspected of having a mental or physical impairment or seeks to be free from restrictions based on an impairment. (O.R. C.

ag 4507.14) with and the whether the lower court erred in its interpretation of the law regarding excessive force?

- D. Whether Smith established or presented evidence supporting
- E. ~~Whether Herzog and Berigan interfered in Plaintiff's family relationships and the lower court erred in the interpretation of the law?~~ **CDL Suspension:** this suspension occurs when the CDL holder/ driver is convicted of a DUI in a non-commercial vehicle. This provision was instituted in 2006. (O.R. C. 4506.16)

- E. Whether Smith established or presented evidence supporting
- F. ~~Municipal Liability and Denying Qualified Immunity~~ **NDR Suspension:** this suspension occurs when the National Driver's Registry, identifies an Ohio license holder as having been convicted of a traffic violation charge in another state or when an Ohio license holder has unresolved traffic violations in another state. (O.R. C. 4510.17)

III STATEMENT OF THE CASE

A. Proceedings in District Court

On December 18, 2013, Smith filed this lawsuit against the City of Wyoming and several of its police officers (WPD) because they entered her

home on four separate occasions. Entry was gained without search warrant, consent or exigent circumstances. In addition, WPD's action assisted Smith's ex husband in stalking Smith and retaliation. WPDs' behavior finally

2 **Pre-hearing Issues** culminated into assault and battery, false arrest, intentional infliction of

emotional stress and defamation. Further, these actions resulted in

harassment, intimidation, and interfered in family relationships. This side being present on the telephone or otherwise.

continued until December 6, 2013. (RE 3, Complaint).

2. It is suggested that you call the AAG at 614-466-2980

On February 28, 2014, Defendants filed an Answer and Motion to Dismiss Plaintiff's Complaint which states, among other things, Smith's complaint fails to state a claim for which relief can be granted, statute of

B. *Continuance Requests*

1. It depends on the Hearing Examiner. I would typically grant a continuance if I was given enough notice to contact everyone.
2. Factors the Hearing Examiners consider when contemplating granting a continuance are:
 - a. Have witnesses been subpoenaed?
 - b. Has the case been continued before?
 - c. How old is the offense?
 - d. Is it a security or CDL suspension?
 - e. Can the Respondent/Petitioner give the Hearing Examiner a written statement?

C. *Choice of Venue*

1. Generally, noncompliance and CDL disqualifications hearings are being held in Columbus. (O.A.C. 4501:1-1-24)
2. I have heard disqualification hearings in Cincinnati.

D. *Jurisdictional Preemptions*

1. If a state court or bankruptcy court issues a stay, then the BMV has to honor the stay. Bankruptcy court orders do not affect the license enforcement component, but do render void the requirement that the driver pay the security.

E. *Public Records Requests*

1. Generally, discovery/record the BMV is relying on is

given to the party while the party is waiting on the hearing to begin. However, it is possible to ask the AAG for discovery prior to the hearing.

2. If all else fails, a party can make a demand under the Public Records Act. (O.R.C. 149.43)
3. The Administrative Procedure Act does not state how a party can enforce a discovery demand.

F. *Due Process Issues*

1. Due Process under the Federal and State Constitutions require the opportunity to be heard by an impartial Hearing Examiner.

G. *Corporation Representation*

1. These hearings are subject to appeal to the common please court. As a consequence, only an attorney admitted to the bar in Ohio can represent the interests of another.
2. A parent may accompany a minor, but a parent may not assume an adversarial role by examining witnesses/ objections etc.

3. **Hearings**

A. *Ohio Administrative Procedure Act (R.C. 119)*

1. The OAPA states how hearings are to proceed.
2. Generally the hearings are recorded by a stenographer; oaths are administered by the Hearing Examiner or the stenographer; a representative from the reinstatement office is present and acts as the baliff; the AAG and parties are present; witnesses are examined by the parties and can be examined by the Hearing Examiner; the AAG

presents the BMV's case first since the BMV has the burden of proof; the Hearing Examiner can require the parties to file briefs or proposed findings or both, and; the Hearing Examiner drafts a report that contains findings of facts, conclusions of law and a recommendation of action to be taken by the Registrar. (O.R.C. 119.09)

3. The Registrar can accept, reject or modify the Hearing Examiners report.
4. The Registrar disseminates the report.
5. The parties can appeal the Registrar's action/recommendation.

B. *Scope of Hearing*

1. The statute creates the scope of the hearing, in some cases, and the Notice to Respondents provides some guidance regarding scope of the hearing.
2. The scope of the hearing is limited to whether the party was actually convicted of or pleaded guilty to the offense the suspension or denial is based on. (O.R.C. 4507.169)
3. In noncompliance suspensions, the scope of the hearing is limited to whether the party was actually provided proof of financial responsibility to the registrar in accordance with ORC 4509.101.

C. *Evidentiary Burden*

1. Again, the state presents its case first and must offer a prime facie case establishing the validity of the suspension.
2. Whether the Respondent appears at the hearing or not, the state has to show, by a preponderance of evidence,

the suspension is valid.

3. After the state rests, the Respondent has the opportunity to present evidence of any defense the Respondent may have. The Respondent must also show, by a preponderance of evidence, the suspension should not stand or be imposed.
4. The state has the opportunity to rebut the Respondent's evidence.
5. It would be rare for a decision to be rendered at the end of the hearing because, again, the Registrar does not have to accept the Hearing Examiner's recommendation.

D. *Forms of Evidence*

1. The ORC allows for written statements; sworn and unsworn. However, the Hearing Examiner still has an obligation to determine the reliability of the statement. Therefore, a distinction is made between a sworn and unsworn statement. (O.R.C. 119.07)
2. Testimony can be given over the telephone. However, a telephone statement cannot be sworn to by a court reporter because a court reporter cannot certify as sworn testimony the testimony of a person who did not appear in person. The court reporter can record the testimony, but the testimony would be treated like a closing argument that may be useful.
3. You can overcome the unsworn, telephone testimony by having the court reporter at the site where the witness is present and once the witness is sworn in the court reporter can leave.

E. *Deadlines*

1. Deadlines can be imposed for the benefit of the licensee

or the public.

2. If a driver has appealed an NDR or CDL suspension, the suspension has been held in abeyance until the matter has been decided or after the hearing. Therefore, the driver has an interest in prolonging the hearing/decision.
3. In noncompliance and random letter suspensions the decision must be made within 30 days of the request for hearing in
4. In CDL suspensions, to the extent practical to do so, the hearing must occur not fewer than 28 days nor more 63 days after receipt of request for hearing. In CDL suspensions, the BMV is to notify the driver of the hearing date no later than 14 days before the hearing. (O.A.C. 4501:1-1-24)
5. In CDL suspensions, no continuances of the hearing shall be granted without good cause. Any continuance date shall not be later than seventy days after the original hearing. Upon issuing a continuance the Registrar may upon its own recommendation or that of the Hearing Examiner, terminate the stay of the disqualification.
6. In NDR cases (DUI), the hearing must be held within 40 days of the date of the request for hearing.

4. **Typical Issues**

A. *Non-Compliance Suspensions*

1. These cases arise when the driver gets a citation for a moving violation or a random selection letter and cannot produce proof of insurance coverage.
2. The issue in a noncompliance suspension is did the driver have insurance or one of the bond alternatives?

3. The driver will often argue his/her insurance coverage was terminated improperly because the agent failed to apply the premium payment or the insurer failed to give notice prior to terminating the insurance coverage.
4. Under 4509.101(D)(5)(c) it is beyond the scope of the hearing to prove the insurer was wrongfully denied coverage. The hearing is limited to whether the person demonstrated to the Registrar proof of financial responsibility. Under O.R.C. 4509.101(G)(1) there are six forms of proof a person can provide to the Registrar. In addition, O.R.C. 4509.101(G)(2) provides a person can demonstrate proof of financial responsibility in any form the Hearing Examiner may consider appropriate.
5. Under O.R.C. 4509.101(L)(1) a person can raise an exemption.

B. *Security Suspensions*

1. These cases arise when the owner or driver is involved in an auto accident and cannot produce proof of insurance coverage or does not pay for the damages.
2. The issue in a security suspension is whether there is a “reasonable possibility” the Respondent could be held liable for damages in an auto accident and the uninsured/did not pay for those damages. To some degree, the Hearing Examiner determines what the damages are based on the evidence presented. This liability extends to the owner of the vehicle who was not driving at the time of the accident with few exceptions.
3. Under O.R.C. 4509.12 to 4509.30, it is beyond the scope of the hearing to resolve factual issues raised, but the Hearing Examiner decides whether there are conflicting, material facts.
4. If the Hearing Examiner finds there is a reasonable

possibility the Respondent could be held liable for damages then the owner/driver must deposit with the BMV the money to cover the damages to the other vehicle. The deposit does not go to the injured driver, but remains on deposit for two years with the BMV and is released to the injured driver if the injured driver is successful in civil court.

5. The owner will often argue unauthorized use. There is an affidavit the owner can sign to this effect. In this case, the owner is absolved from liability.
6. Oftentimes, the injured driver's insurance company will accept an agreement, signed by the uninsured, to pay the cost of the damages in exchange for the insurance/ injured person signing a release to allow the uninsured to get their license back.
7. Under OAC 4501:1-2-07 and 4509.101(A)(3)(c) a person can be randomly selected by the registrar to provide proof of financial responsibility and, if unable to do so, have their license suspended.

C. *CDL Suspensions*

1. The issue here is whether the CDL operator received a citation; not the sufficiency of the evidence that led to citation. All the AAG has to do is have the driver identify the citation.
2. CDL operators get a stay of the suspension when they request a hearing. However, the Registrar on its own or on the recommendation of the Hearing Examiner can vacate the stay and impose the disqualification until the hearing and report is received by the Ohio Department of Public Safety. (O.A.C. 4501:1-1-24).
3. Two or more serious traffic citations will result in longer disqualification periods. O.R.C. 4506.16(A).

4. O.R.C. 4506.16(D)(1) provides for a suspension of a CDL license when the CDL holder is convicted of a DUI even though they are driving a noncommercial vehicle. The suspensions is for one year for the first conviction.

D. *National Driver Registry Suspensions*

1. Oftentimes, the driver will testify he or she has attempted to resolve all outstanding problems in the other state, but was unable to do so. I have called the prosecutor in the case, out of state BMV and received information on how to resolve the issue. I would suggest this course of action.

E. *Medical Suspensions*

1. Anyone can report a driver is suspected of impairment, including age, sight and hearing. Usually it is law enforcement, although I had a judge make a report. Look for physician releases or conditional authorizations.

5. **Contacting BMV**

The BMV's administrative hearing assistant is Veronica Krupinski, Administrative Hearings Secretary Bureau of Motor Vehicles, Ohio Department of Public Safety, 1970 Broad Street, Columbus, Ohio 43223. Her telephone number is (614)466-7014 and fax number is (614)752-6063. In Cincinnati, Maryann Henninger, Cincinnati Reinstatement Office, is a good resource. She can be reached at 513-921-6444. The Hamilton County Reinstatement Office is 10948 Hamilton Ave, Cincinnati, Ohio 45231.

Disclaimer: These material are presented as an effort to familiarize members of the bar with legal and practical issues that arise in BMV hearings. The materials are not laws, but are only the comments of an individual with experience in the field of administrative law, generally, BMV regulations and distractive procedures in particularly. The comments are solely the observations of the author and are not to be considered BMV policy or a substitute for statute, regulation, authoritative case analysis or any other type of primary authority.