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IN THE CIRCUIT COURT OF HARRISON COUNTY, WEST VIRGINIA

STEVEN T. LOWE,

Petitioner,

v. Case No. 06-C-431-1

JOSEPH CICCHIRILLO, Commissioner of the West Virginia Division of Motor Vehicles,

Respondent.

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JUDGMENT ORDER

On the 26th day of February, 2007, came the petitioner, by Jerald E. Jones, his attorney, and the respondent, by Susan Morris, his attorney, pursuant to this day having been set for oral argument upon the petitioner's petition for review of the final order of the Commissioner of the West Virginia Division of Motor Vehicles.

Thereupon, the issues raised in the petition filed herein were discussed by counsel for the parties and the Court.

Upon consideration of all of which the Court makes the following findings of fact and conclusions of law.

1. The West Virginia Rules of Evidence apply in Contested Administrative Agency Cases (W. Va. Code §29A-5-2).

2. The Commissioner erred in admitting into evidence blood alcohol content of the petitioner from blood drawn by United Hospital Center during medical treatment of the petitioner by finding that it was not necessary to comply with Health

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Department Regulations and W. Va. Code §17C-5-6 in the taking and analysis of petitioner's blood.

3. There was no testimony by the person who drew petitioner's blood specimen as to how that was done nor was there any testimony by the chemist or laboratory technician who analyzed it.

4. The commissioner erred in finding that petitioner was driving improperly when the testimony of the arresting officer was that he never observed petitioner driving and that the officer concluded that the petitioner was not at fault in the accident which required medical treatment of the petitioner at United Hospital Center.

5. The petitioner produced and entered into evidence a case history sheet of the Harrison County Magistrate Court showing that he was found "not guilty" of the underlying DUI charge.

6. The Commissioner erred in failing to consider and give substantial weight to the results of petitioner's criminal charge as dictated by Choma v. W. Va. Division of Motor Vehicles, 210 W. Va. 256, 557 S.E.2d 310 (2001).

7. The Commissioner committed substantial errors in ruling upon questions of fact and law which are prejudicial.

8. The Final Order of the Commissioner revoking the petitioner's driving privileges, effective October 13, 2006, should be reversed.

It is, accordingly, ADJUDGED and ORDERED that the Final Order of the respondent, Commissioner of the Division of Motor Vehicles, effective October 13,

2006, for a period of 6 months is hereby reversed and the petitioner's driving privileges in the State of West Virginia are hereby reinstated.

The respondent is reserved and objection and exception to the judgment of the Court.

The Clerk is directed to provide copies of this Order to Jerald E. Jones, P. O. Box 2348, Clarksburg, West Virginia 26302-2348; Susan Morris, Harrison County Courthouse, 301 West Main Street, Clarksburg, West Virginia 26301; and Joseph Cicchirillo, Commissioner, West Virginia Division of Motor Vehicles, Driver Services, 1800 Kanawha Boulevard, East, Building 3, Room 118, Charleston, West Virginia 25317. The Clerk is directed to remove this case from the docket.

ENTER: March 9, 2007

John Lewis Marks, Jr., Judge

Submitted By:

Jerald E. Jones (WVSB #1920)

Approved as to form by:

Susan Morris (WVSB #5591)