

**BRIEF FILED  
WITH MOTION**

**IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA  
NO. 13-1225**

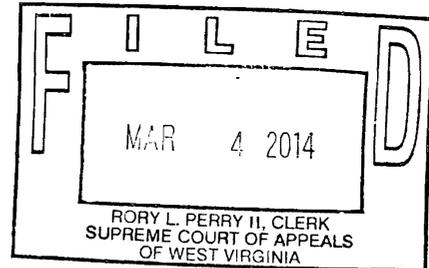
**STEVEN O. DALE, ACTING COMMISSIONER,  
WEST VIRGINIA DIVISION  
OF MOTOR VEHICLES,**

**Petitioner,**

**v.**

**CHRISTINA PAINTER,**

**Respondent.**



**PETITIONER'S BRIEF**

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## ASSIGNMENTS OF ERROR

- I. **THE CIRCUIT COURT ERRONEOUSLY FOUND AS FACT THAT RESPONDENT REQUESTED A BLOOD TEST AND WAS NOT PROVIDED WITH ONE, WHEN THIS WAS NOT SUPPORTED BY RELIABLE, PROBATIVE AND SUBSTANTIAL EVIDENCE ON THE WHOLE RECORD.**
  
- II. **INASMUCH AS THERE IS NO STATUTORY REMEDY FOR NOT OBTAINING A BLOOD TEST, THE CIRCUIT COURT ERRED IN FINDING THAT RESPONDENT'S CONSTITUTIONAL AND STATUTORY RIGHTS WERE VIOLATED.**

## STATEMENT OF THE CASE

At 12:07 on August 21, 2010, J. J. Garbin of the Nitro Police Department, the Investigating Officer in this matter, stopped the Respondent for speeding in Nitro, West Virginia. When the Investigating officer approached Respondent, he noticed that her speech was slow, her attitude was confused, and her eyes were glassy. Respondent failed the horizontal gaze nystagmus test, the walk-and turn test, and the one-leg stand test. She submitted to the preliminary breath test, which showed that she had a blood alcohol content of .187. A. R. at 2-6, 16-21.

At 12:15 a.m., the Investigating Officer placed Respondent under arrest and transported her to the Nitro Police Department, where he administered a secondary chemical test of the breath. The results of that test show that Respondent had a blood alcohol content of .164. A.R. at 5, 21.

At the administrative hearing in this matter, held before the Office of Administrative Hearings ("OAH") on December 6, 2011, Respondent testified that she called her daughter while she was being transported to the police station, and they talked about Respondent's prior gastric bypass surgery and whether that would affect Respondent's blood alcohol content; Respondent testified that

her daughter said she didn't sound like she had been drinking. Respondent claims that the Investigating Officer overheard this conversation. She then testified that when she was incarcerated at Western Regional Jail following her arrest, she asked someone walking by for a blood test. A. R. at 42.

In the Final Order Findings of Fact and Conclusions of Law of the OAH, entered April 27, 2012 ("Final Order"), the Chief Hearing Examiner did not find as fact that Respondent requested a blood test; indeed, the purported request was not mentioned in the Findings of Fact. However, in the "Discussion" portion of the Final Order, the Chief Hearing Examiner found that the Respondent requested a blood test and was not given one, and that the Investigating officer failed to provide Respondent with a blood test. He then concluded that the other evidence presented was sufficient to uphold the DMV's initial order of revocation. A. R. at 54-63.

Respondent appealed the Final Order to the circuit court on May 10, 2012. On May 10, 2012, Respondent filed a Motion for Stay of Execution. On July 12, 2012, the circuit court held a hearing on the motion for stay, and ordered briefing solely on the issue of the request for a blood test. On August 8, 2012, the circuit court entered an order granting motion for stay of execution. Following full briefing and hearing on the matter, the circuit court entered an Order Certifying a Legal Question to the West Virginia Supreme Court of Appeals on November 29, 2012. On May 16, 2013, this Court declined to docket the case.

Back in the circuit court, Petitioner moved the court for a final appealable order. Following briefing and a hearing, the circuit court entered the Order Granting Petition for Appeal (hereinafter, "Order") which is the subject of the present appeal. A. R. at 148.

## SUMMARY OF ARGUMENT

The circuit court erroneously accepted as fact that the Respondent requested a blood test, and created new law in finding that if a blood test is requested and not given, the license revocation must be rescinded. The West Virginia Legislature has not created a remedy for failure to provide a blood test, and the circuit court is in error in legislating a remedy from the bench.

## STATEMENT REGARDING ORAL ARGUMENT AND DECISION

Argument pursuant to Rev. R.A.P Rule 19 is appropriate on the bases that this case involves assignments of error in the application of settled law; that the case involves an unsustainable exercise of discretion where the law governing that discretion is settled; and that this case involves a result against the weight of the evidence.

## ARGUMENT

### **I. THE CIRCUIT COURT ERRONEOUSLY FOUND AS FACT THAT RESPONDENT REQUESTED A BLOOD TEST AND WAS NOT PROVIDED WITH ONE, WHEN THIS WAS NOT SUPPORTED BY RELIABLE, PROBATIVE AND SUBSTANTIAL EVIDENCE ON THE WHOLE RECORD.**

In the Order, the circuit court erred in accepting the OAH Chief Hearing Examiner's statement that Respondent requested a blood test from the Investigating Officer. The Findings of Fact in the OAH's Final Order do not contain any reference to Respondent's purported request. Further, the blood test request was not mentioned in Respondent's counsel's closing statement. A. R. at 44-45. The only reference to a request for a blood test was in the "Discussion" portion of the Final Order. The circuit court's Order adopted the unsupported statement in the Final Order, noting, "the Chief Hearing Examiner noted that Ms. Painter requested a blood test from the Investigating

Officer.” A. R. at 150. The circuit court did not address the Respondent’s purported request made to the unknown person at the Regional Jail.

W. Va. Code § 29A-5-3 requires that

Every final order or decision rendered by any agency in a contested case shall be in writing or stated in the record and shall be accompanied by findings of fact and conclusions of law. ...Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings.

Any discussion should be based on findings of fact, explaining the agency’s reasoning. *See, Citizens Bank of Weirton v. West Virginia Bd. of Banking and Financial Institutions*, 160 W.Va. 220, 233, 233 S.E.2d 719, 728 (1977) (“If the Board's findings of fact and conclusions of law had been drafted in proper form, then we could have applied the appropriate standard of review, namely, did the evidence in any reasonable way support the findings of fact, and further did the findings of fact support the Board's conclusions of law.”). Here, the discussion in the Final Order did not relate back to the OAH’s Findings of Fact, and the statement that the Respondent requested a blood test cannot be considered a finding of fact.

This Court on review should find that the statement that Respondent requested a blood test is “clearly wrong in view of the reliable, probative and substantial evidence on the whole record.” W. Va. Code § 29A-5-4. It is not a question of substitution of judgment by this Court; it is the complete lack of support in the record for an offhand statement by the Chief Hearing Examiner on the way to a conclusion that sufficient evidence was presented to show that Respondent committed the offense of aggravated driving under the influence (“DUI”).

“On appeal of an administrative order from a circuit court, this Court is bound by the statutory standards contained in W.Va.Code § 29A-5-4(a) and reviews questions of law presented de novo; findings of fact by the administrative officer are accorded deference unless the reviewing court believes the findings to be clearly wrong.” Syl. Pt. 1, *Muscatell v. Cline*, 196 W.Va. 588, 474 S.E.2d 518 (1996).

Syl. Pt. 1, *Kanawha Eagle Coal, LLC v. Tax Com'r of State*, 216 W.Va. 616, 609 S.E.2d 877 (2004).

The evidence of a blood test request is so flimsy and tangential to the case that it was not even mentioned in Respondent’s counsel’s closing argument. The Discussion in the Final Order constitutes neither proof of request for a blood test, nor proof that the officer impeded her ability to obtain the test. It is not even clear to which of the two purported requests the Chief Hearing Examiner is referring.

The only evidence in the record which would indicate Respondent’s purported requests for a blood test is her self-serving testimony at the hearing. The officer’s contemporaneous notes contain no indication that the Respondent asked for a blood test. The relevant testimony is as follows.

On cross-examination of Investigating Officer Garbin:

Q: Did you inform her of the right to a blood test?

A: No.

A. R. at 30.

On cross-examination of the Respondent, the following testimony was adduced:

Q: Do you remember if you asked for a blood test at any time?

A: I explained that I had that surgery.

Q: Do you recall when that was?

A: Not exactly. I just—I asked to call my daughter from the squad car because my daughter was home alone. I called my daughter that’s in law school and told her what was going on. I said I did not want to alarm her, but I wanted to let her know what was going on. I don’t remember where I was going with that. Oh, he overheard my conversation with my daughter, and she said, “Well, Mom, you don’t

sound like you've been drinking," and I said, "It could be something to do with that surgery. I remember they warned me about that." So he was aware that I had the surgery. And then I told my daughter I'm going to have a blood test.

Q: Did you tell the officer there himself?

A: **No, not this officer.**

Q: Did you ever tell them?

A: At Western Regional Jail I told them. I asked him if he heard my conversation, and he didn't offer me one.

A. R. at 41-42 (Emphasis added).

On re-direct examination, Respondent testified:

Q: Christina, you discussed earlier that you had asked for a blood test and that you actually specifically asked for a blood test at Western Regional. Can you talk about that for me, please?

A: Well, they already put me in a cell, and somebody was walking by, a guard or somebody. I don't know what is position or rank was, but I said, "Please have somebody give me a blood test." I said, "That's the only way you're going to know," but I never heard anything from anybody. I don't even know if they reported my request.

Q: How long had you been at the jail when that happened? Was that right when you arrived or after hours?

A: No, it wasn't right when I arrived. I was kind of scared. I didn't really want to say anything, you know, and then finally, you know, I had better say something here, and it was shortly after I arrived.

A. R. at 42. The circuit court expressly did not address this purported request, finding that the Chief Hearing Examiner only made a finding that the request was made to the Investigating Officer. A.R. at 155.

There is no evidence that Respondent requested a blood test from Investigating Officer Garbin. The conversation she had with her daughter while in the squad car is certainly not conclusive of whether the officer knew or understood that she had gastric bypass surgery, and does not amount to a request for a blood test. Respondent's alleged second request, to an unknown person at the Western Regional Jail after her incarceration, is equally implausible.

This Court should exercise its prerogative to reverse or remand based on a clearly erroneous finding of fact. Syl. Pt 1 of *In Interest of Tiffany Marie S.*, 196 W.Va. 223, 470 S.E.2d 177 (1996), supports this point:

A finding is clearly erroneous when, although there is evidence to support the finding, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed. However, a reviewing court may not overturn a finding simply because it would have decided the case differently, and it must affirm a finding if the circuit court's account of the evidence is plausible in light of the record viewed in its entirety.

The circuit court cited *Tiffany* to support its reversal of the OAH's Final Order; however, the findings of the OAH, that Respondent committed the offense of aggravated DUI, are also supported by the record yet were ignored by the circuit court.

Pursuant to *White v. Miller*, 228 W.Va. 797, 724 S.E.2d 768 (2012), an agency cannot simply accept one piece of evidence over another piece of conflicting evidence. *White* provides:

Where there is a direct conflict in the critical evidence upon which an agency proposes to act, the agency may not select one version of the evidence over the conflicting version unless the conflict is resolved by a reasoned and articulate decision, weighing and explaining the choices made and rendering its decision capable of review by an appellate court. In accord, syl. pt. 1, *Choma v. Division of Motor Vehicles*, 210 W.Va. 256, 557 S.E.2d 310 (2001).

Id. at 228 W.Va. 808, 724 S.E.2d 779. *See also, Muscatell v. Cline*, 196 W.Va. 588, 474 S.E.2d 518 (1996). The Final Order did not find as fact that Respondent requested a blood test, much less whether it was the purported request to the Investigating Officer or to the unknown person at the jail. It does not find as fact that the request was made within two hours of the arrest, as required by W. Va. Code §17C-5-9. There is no reasoned, articulate decision, weighing and explaining the choice

made based on the OAH's findings of fact. *See, Thompson v. West Virginia Bd. of Osteopathy*, 191 W.Va. 15, 19, 442 S.E.2d 712, 716 (1994) ("The requirement of the Board's formal consideration and adoption of findings of fact and conclusions of law is a safeguard against arbitrary and capricious conduct."). The statements of the OAH come out of left field, as an aside to the ultimate finding that there was sufficient evidence presented to show that Respondent committed aggravated DUI. Thus, in addition to the fact that there is not any evidence to show that Respondent requested a blood test, except perhaps her self-serving prepared testimony, the OAH did not set forth its reasoning in the Final Order with sufficient clarity to permit review. It cannot be accepted as fact.

The OAH Chief Hearing Examiner did not find as fact that the Respondent requested a blood test. A. R. at 55-57. In the Final Order of the OAH, the Chief Hearing Examiner found that the abundance of evidence showing that the Respondent committed the offense of DUI was not negated by the blood test request. The Chief Hearing Examiner reiterated the Respondent's testimony that she was concerned that gastric bypass surgery would affect the Intoximeter result. He then found that Respondent failed to produce any reliable evidence to support this alleged correlation. A.R. at 59. There is no analysis whatsoever of the factual or legal implications of the blood test evidence by the OAH, yet the circuit court has taken the opportunity to legislate a penalty of rescission of the license revocation on the basis that the Respondent's constitutional and statutory rights were violated.

If a test is deemed requested on facts as flimsy as those in the present case, any driver may come in to a hearing and state that they asked for a blood test, with no recourse to law enforcement. The circuit court noted, many times, that Ms. Painter's testimony is uncontroverted. In this case, the officer did not testify regarding any request for a blood test. The evidence is so flimsy and tangential

to the case that it was not even mentioned in Respondent's counsel's closing argument. A. R. At 45. The random comments of the Chief Hearing Examiner in the Final Order do not constitute proof of request of a blood test or refusal of the test.

There is no evidence that Respondent requested a blood test from Investigating Officer Garbin. The conversation she had with her daughter while in the squad car is certainly not conclusive of whether the officer knew that she had gastric bypass surgery, and does not amount to a request for a blood test. Further, Respondent's testimony that she requested a blood test from "somebody...walking by" in the Western Regional Jail cannot be deemed to be a request, when the alleged requestee is unidentified. A. R. at 42. Respondent's story is "uncontroverted" because no one knows who to call to refute the testimony.

The facts in the record do not support the circuit court's finding that the Respondent requested a blood test. The *Order* must be reversed.

**II. INASMUCH AS THERE IS NO STATUTORY REMEDY FOR NOT OBTAINING A BLOOD TEST, THE CIRCUIT COURT ERRED IN FINDING THAT RESPONDENT'S CONSTITUTIONAL AND STATUTORY RIGHTS WERE VIOLATED.**

There is no basis in statute or caselaw for reversing the Final Order of the OAH excluding the evidence that Respondent had committed the offense of "aggravated" DUI, or for rescission of the revocation. Relying on *Koenig v. North Dakota Dept. of Transp.*, 810 N.W.2d 333 (N.D.2012), the circuit court was compelled in the *Order* to impose a heretofore nonexistent remedy for a violation of W. Va. Code § 17C-5-9. However,

"[I]t is not for [courts] arbitrarily to read into [a statute] that which it does not say. Just as courts are not to eliminate through judicial

interpretation words that were purposely included, *we are obliged not to add to statutes something the Legislature purposely omitted.*” ... Moreover, “[a] statute, or an administrative rule, may not, under the guise of ‘interpretation,’ be modified, revised, amended or rewritten.”

*Perito v. County of Brooke*, 215 W. Va. 178, 184, 597 S.E.2d 311, 317 (2004) (additional internal quotations and citations omitted).

In West Virginia, there is a statutory right to request a blood test in addition to the designated test of the breath. *State v. York*, 175 W. Va. 740, 338 S.E.2d 219 (1985); *Moczek v. Bechtold*, 178 W. Va. 553, 363 S.E.2d 238 (1987); *In re: Burks*, 206 W. Va. 429 (1999). In *York*, this Court found that the right to receive a blood test is an important constitutional right. However, the court in *York* also noted:

But from a driver's right to ask for a blood test in addition to the breathalyzer test, we cannot infer a duty on the part of law-enforcement officers to administer a blood test in every case in which they arrest someone for driving while intoxicated. *W. Va. Code* 17C-5-9 [1983] clearly does not *require* blood tests.

175 W. Va. 741, 338 S.E.2d 221. Justice Neely did not elaborate on this point, and the court in *York* found, as a factual matter, that the defendant did not request a blood test. Although the Court in *Burks, supra*, subsequently found that a person who requests and is entitled to a blood test must be given that opportunity, there remains some question about entitlement to a blood test, even if it is duly requested. The *Koenig* case answers some of those questions.

In an attempt to find that there is a remedy for not obtaining a blood test, the circuit court relied on one case *in the administrative context* which has dealt with this matter: *Koenig*. A. R. At 156. Yet the statement in *Koenig* cited by this Court (“If an individual is denied this statutory right,

results of tests administered at the direction of law enforcement may be suppressed or the charges may be dismissed.” 810 N.W.2d 336) derives from the *criminal* context. The origin of this principle in North Dakota is *State v. Dressler* 433 N.W.2d 549 (N.D.App.,1988), a criminal prosecution for DUI in which the court found that the motorist was deprived of a reasonable opportunity to exercise his statutory right to an additional test when the arresting officer refused to transport him upon his request to a nearby community hospital. The court affirmed a motion to suppress the test results. In a subsequent criminal case, the court denied a motion to suppress the Intoxilyzer test evidence because the driver failed to make arrangements for an independent blood test. *City of Grand Forks v. Risser*, 512 N.W.2d 462 (N.D.,1994).

The issue finally arose in the administrative context in 2010 in *Lange v. North Dakota Dept. of Transp.*, 790 N.W.2d 28 (N.D.,2010), in which the North Dakota Supreme Court upheld the revocation of the driver’s license, finding that driver was not denied the opportunity to obtain an independent chemical test.

When the principle is stated in *Koenig*, it is with a citation to *Lange*. Yet in both of these cases, the court affirmed the license revocation, finding that there was no denial of a blood test request. Neither *Koenig* (contrary to this Court’s holding in the *Order*) nor *Lange* reaches the question of whether there is a remedy in the administrative context.

The OAH correctly relied upon the result of .164 on the Intoximeter test administered to the Respondent as dispositive of her offense of aggravated DUI. The Investigating Officer did not direct a blood test. W. Va. Code § 17C-5-6 provides, “The person tested may, at his or her own expense, have a doctor of medicine or osteopathy, or registered nurse, or trained medical technician at the place of his or her employment, of his or her own choosing, administer a chemical test in addition

to the test administered at the direction of the law-enforcement officer.” Thus, even if it is deemed that Respondent requested a blood test, she made no effort to obtain the test, and did not request any assistance from law enforcement to obtain the test. *See, Koenig, supra* (“The right to an independent test is generally viewed as the right of an arrestee to be free from police interference in obtaining the test through his or her own efforts and expense.[citation omitted]”; “the arrestee has the duty to make arrangements for the test.”; ‘Officers do not need to assist in obtaining an independent test but must not prevent, hinder, or delay an arrestee's attempts to secure an independent test. An officer does not need to transport an arrestee seeking an independent test but must at least provide access to a telephone.’ [citation omitted]. 810 N.W.2d 336).

The statute at issue here is silent as to any penalty for failing to provide a blood test when requested. The OAH in this case found that the evidence in the record was sufficient to sustain the revocation of Respondent’s license, even though it noted that Respondent had requested and been refused a blood test. The OAH, implicitly, did not apply any penalty for failure to provide a blood test. It correctly weighed the evidence and found that the revocation was supported. This Court should follow suit.

If legislative intent is not clear, a reviewing court may not simply impose its own construction of the statute in reviewing a legislative rule. Rather, if the statute is silent or ambiguous with respect to the specific issue, the question for the court is whether the agency's answer is based on a permissible construction of the statute. A valid legislative rule is entitled to substantial deference by the reviewing court. As a properly promulgated legislative rule, the rule can be ignored only if the agency has exceeded its constitutional or statutory authority or is arbitrary or capricious. W.Va.Code, 29A-4-2 (1982).

*Appalachian Power Co. v. State Tax Dept. of West Virginia*, 195 W.Va. 573, 579, 466 S.E.2d 424, 430 (1995)n.4. This Court should decline to amend the statutory scheme, and enter an order reversing the circuit court. The circuit court's citation to the North Dakota Century Code § 39-20-02 illustrates the fact that the West Virginia statute *does not* provide a remedy for the lack of a blood test. A.R. at 156; W. Va. Code §§ 17C-5-6, 9.

Further, under the facts in *Koenig*, the Supreme Court of North Dakota affirmed the license revocation, finding that the officers did not have a duty to take Koenig to the hospital.

Koenig seeks to place an affirmative duty on law enforcement officers to transport arrestees who have made arrangements for an independent test. However, the arrestee has the duty to make arrangements for the test.

810 N.W.2d 336.

The *Koenig* court cited *Lange, supra*, which held:

“Officers do not need to assist in obtaining an independent test but must not prevent, hinder, or delay an arrestee's attempts to secure an independent test. An officer does not need to transport an arrestee seeking an independent test but must at least provide access to a telephone.”

810 N.W.2d 336.

In making its conclusion that the appropriate remedy for failure to give a requested blood test is rescission of the revocation, the circuit court acknowledged but avoided applying this Court's opinions on the exclusionary rule: *Miller v. Toler*, 229 W. Va. 302, 729 S.E.2d 137 (2012) and *Miller v. Smith*, 229 W. Va. 478, 729 S.E.2d 800 (2012). These cases are applicable to illustrate the distinction between the criminal and administrative cases in the event of a constitutional deprivation.

“It is also well established that a proceeding to revoke a driver's license is a civil not a criminal action.” *Shumate v. West Virginia Dep't of Motor Vehicles*, 182 W.Va. 810, 813, 392 S.E.2d 701, 704 (1990) (internal quotations omitted).

Fn. 9, *Miller v. Smith*, 729 S.E.2d 806.

In *Miller v. Toler*, 729 S.E.2d 138 n. 3, this Court held: “The judicially-created exclusionary rule is not applicable in a civil, administrative driver's license revocation or suspension proceeding.” It is true that these cases dealt with illegal seizures; however, they are not inapplicable to the present case, as the circuit court suggests (A. R. at 160), but rather support for the proposition that although there may be penalties in the criminal prosecution for the due process violation of failure to provide a duly-requested blood test, those penalties should *not* carry over to the civil license revocation matter. As was noted above, there is only one case nationwide dealing with failure to provide a blood test in the civil context, and even that case holds that the driver must make some effort to obtain the test.

This Court has been loathe to frustrate the administrative process of removing drunk drivers promptly from the roads.

This Court has previously held that “[t]he purpose of this State's administrative driver's license revocation procedures is to protect innocent persons by removing intoxicated drivers from the public roadways as quickly as possible.” Syl. Pt. 3, *In re Petition of McKinney*, 218 W.Va. 557, 625 S.E.2d 319 (2005). This purpose behind the administrative sanctions for driving under the influence set forth in West Virginia Code §§ 17-5A-1 to -4 (2009) would be thwarted if the exclusionary rule was applied in an administrative license revocation or suspension proceeding at a substantial cost to society. Other courts, likewise, have acknowledged this substantial cost of applying the exclusionary rule in a license revocation or suspension proceeding. For instance, in *Powell v. Secretary of State*, 614 A.2d 1303 (1992), the Supreme Judicial Court of Maine stated:

“Because the evidence has already been excluded from the criminal proceeding, there is little additional deterrent effect on police conduct by preventing consideration of the evidence by the hearing examiner. The costs to society resulting from excluding the evidence, on the other hand, would be substantial. The purpose of administrative license suspensions is to protect the public. *Thompson v. Edgar*, 259 A.2d 27, 30 (Me.1969). *Because of the great danger posed by persons operating motor vehicles while intoxicated, it is very much in the public interest that such persons be removed from our highways.*”

614 A.2d at 1306–07 (emphasis added).

*Toler*, 729 S.E.2d 141 -142. The logic applied in the *Smith* and *Toler* cases should apply in the present case. Remedies for failure to provide a blood test may apply in the criminal context, but little purpose is served by applying them in a civil license revocation matter.

This Court should decline to amend the statutory scheme and reverse the *Order*.

### CONCLUSION

The Court should reverse the *Order Granting Petition for Appeal* entered by the circuit court of Putnam County on October 28, 2013.

Respectfully submitted,

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Post Office Box 17200  
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IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA  
NO. 13-1225

STEVEN O. DALE, ACTING COMMISSIONER,  
WEST VIRGINIA DIVISION  
OF MOTOR VEHICLES,

Petitioner,

v.

CHRISTINA PAINTER,

Respondent.

**CERTIFICATE OF SERVICE**

I, Janet E. James, Senior Assistant Attorney General, do hereby certify that the foregoing *Petitioner's Brief* was served upon the opposing party by depositing a true copy thereof, postage prepaid, in the regular course of the United States mail, this 4th day of March, 2014, addressed as follows:

David O. Moye, Esquire  
Post Office Box 26  
Winfield, WV 25213

  
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JANET E. JAMES