



**Before The  
State of Wisconsin  
DIVISION OF HEARINGS AND APPEALS**

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In the matter regarding the Driver License  
Revocation of [REDACTED]

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Case No: DOT-25-0003

**DECISION GRANTING DEPARTMENT'S MOTION TO DISMISS**

The PARTIES to this proceeding are:

[REDACTED] Petitioner, by  
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Wisconsin Department of Transportation, by  
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**PROCEDURAL HISTORY**

By letter dated November 7, 2024, the Department of Transportation (Department) ordered the lifetime revocation of the Petitioner [REDACTED] privilege to drive a motor vehicle pursuant to Wis. Stat. § 343.31(1m)(b). On December 3, 2024, the Petitioner requested a hearing for review of the Department's decision pursuant to Wis. Stat. § 227.42(1).

The Department forwarded the hearing request to the Division of Hearings and Appeals on January 27, 2025. Administrative Law Judge Angela Chaput Foy was appointed to preside over the matter. A prehearing conference was held with the parties on Thursday, February 20, 2025, at which time the issues for hearing were discussed and a schedule was ordered for the filing of pretrial motions.

On March 7, 2025, the Department filed a motion to dismiss the Petitioner's claim. The Petitioner filed a response to the motion on March 18, 2025, and the Department filed a reply on April 4, 2025.

**DISCUSSION**

As determined at the prehearing conference, the only issue for hearing is whether the Department's revocation of the Petitioner's driver's license was properly issued pursuant to Wis.

Stat. § 343.31(1m)(b). The Department seeks dismissal of this matter on the basis that there is no right to a hearing to review the Department's November 7, 2024 decision.

The Petitioner's hearing request was filed pursuant to Wis. Stat. § 227.42(1), which states:

**Right to hearing.** (1) In addition to any other right provided by law, any person filing a written request with an agency for hearing shall have the right to a hearing which shall be treated as a contested case if:

- (a) A substantial interest of the person is injured in fact or threatened with injury by agency action or inaction;
- (b) There is no evidence of legislative intent that the interest is not to be protected;
- (c) The injury to the person requesting a hearing is different in kind or degree from injury to the general public caused by the agency action or inaction; and
- (d) There is a dispute of material fact.

The Department argues that there is no dispute of material fact, which is required by section (d), and as such there is no right to hearing. Because there is no dispute of fact, the Department's motion is granted.

Pursuant to Wis. Stat. § 343.31(1m)(b), the Department is required to revoke a person's operating privilege if the person is convicted of four or more "countable offenses" under Wis. Stat. § 343.307(1), and the fourth countable offense occurs within 15 years of the previous offense. There is no dispute that the Petitioner has been convicted of four such countable offenses. Accordingly, there is no genuine dispute that revocation was required as a matter of law.

The Petitioner states in his hearing request that on November 6, 2024, he was convicted by no contest plea of Operating a Motor Vehicle with a Prohibited Alcohol Concentration – Fourth Offense, contrary to Wis. Stat. § 346.63(1)(b), a Class H felony. Convictions under Wis. Stat. § 346.63(1) are countable offenses under Wis. Stat. § 343.07(1)(a).<sup>1</sup> As part of the Petitioner's criminal sentence, the circuit court ordered that the Petitioner's motor vehicle operating privilege be revoked for a period of 24 months, pursuant to Wis. Stat. § 343.30(1q)(b)4. By letter dated November 7, 2024, the Department then ordered a lifetime revocation of the Petitioner's operating privilege pursuant to Wis. Stat. § 343.31(1m)(b). The Department's letter informed the Petitioner that he may be eligible to apply for reinstatement of his license as of November 5, 2034. The Department's letter also identified, and the Petitioner

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<sup>1</sup> **Wis. Stat. § 343.307 Prior convictions, suspensions or revocations to be counted as offenses.**

(1) The court shall count the following to determine the length of a revocation under s. 343.30 (1q) (b) and to determine the penalty under ss. 114.09 (2) and 346.65 (2):  
(a) Convictions for violations under s. 346.63 (1), or a local ordinance in conformity with that section. ...

has not disputed, that the Petitioner's prior three convictions for operating while intoxicated occurred in 2007, 2014, and 2019. (Petitioner Request for Hearing ¶¶ 1-3 and Ex. A-B)

The Petitioner argues that he is entitled to a hearing because there is a dispute of material fact as to whether the Department had authority to order a lifetime revocation of his operating privilege when the court ordered only a 24-month suspension. This is a question of law, not fact. Moreover, the Department is correct that under the circumstances permanent license revocation was mandatory by law.

As relevant to the Petitioner's claim, state statutes set forth various requirements for revocation or suspension of a person's operating privileges when that person has been convicted of a drunk driving offense. The requirements for the sentencing court and the Department differ. The sentencing court is required to impose certain limitations as set forth in Wis. Stat. § 343.30, including that the court must revoke the person's operating privilege for a period of two to three years if the person is convicted of three or more countable offenses:

**Wis. Stat. § 343.30 Suspension and revocation by the courts.**

(1q) (b) For persons convicted under s. 346.63 (1) ...

4. ... if ... the total number of ... convictions ... counted under s. 343.307 (1), equals 3 or more, the court shall revoke the person's operating privilege for not less than 2 years nor more than 3 years. After the first 45 days of the revocation period has elapsed, the person is eligible for an occupational license under s. 343.10 if he or she has completed the assessment and is complying with the driver safety plan ordered under par. (c).

In addition to the above, the Department is required to permanently revoke a person's operating privilege, under Wis. Stat. § 343.31(1m)(b), if the person is convicted of four or more countable offenses, and the fourth countable offense occurs within 15 years of the previous offense:

**Wis. Stat. § 343.31 Revocation or suspension of licenses after certain convictions or declarations.**

(1m) (b) Upon receiving a record of ... conviction ... counted under s. 343.307 (1) that together with other records of the department show that ... the total number of ... convictions ... counted under s. 343.307 (1), equals 4 or more, *the department shall revoke the person's operating privilege permanently*. This paragraph does not apply if the most recent conviction, suspension, or revocation counted under this paragraph occurred more than 15 years after the next preceding conviction, suspension, or revocation counted under this paragraph. The person is not eligible for an occupational license under s. 343.10. After 10 years of the revocation period have elapsed, the person may apply for reinstatement under s. 343.38.<sup>2</sup>

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<sup>2</sup> The requirements in Wis. Stat. § 343.31, enacted as part of 2017 Wis. Act 172, reflect an intentional policy choice by the Legislature to require the Department to impose a penalty in addition to the court's order against persons who were convicted of four countable offenses. According to the bill hearing materials, the purpose was to create continuity in imposing penalties for repeat drunk driving offenses. See <https://docs.legis.wisconsin.gov/2017/proposals/sb135> (Bill materials and LC act memo showing it was intentional that the Department's revocation order be in addition to whatever the courts were already ordering).

*(Emphasis added)*

Because it is not disputed that the Petitioner's November 6, 2024 conviction constituted a fourth countable offense under Wis. Stat. §§ 343.31(1m)(b) and 343.307(1)(a), and the most recent countable offense was less than 15 years prior, there is no dispute of material fact. The Department was required to order permanent revocation of the Petitioner's license.

The Petitioner also argues that there are additional material facts at issue, including those that the sentencing court considered in deciding to impose a 24-month suspension rather than stricter limitations on the Petitioner's operating privilege. However, any mitigating facts that the court may have considered are not relevant here, since the Department has no discretion under Wis. Stat. § 343.31(1m)(b), which requires permanent revocation under the circumstances.

Accordingly, because there is no dispute of material fact, there is no right to a contested case hearing under Wis. Stat. § 227.42, and the Department's motion to dismiss the Petitioner's hearing request is granted.

#### ORDER

THEREFORE, the Department's motion to dismiss is GRANTED and this matter is DISMISSED. All previously scheduled matters are cancelled.

Dated at Madison, Wisconsin on May 1, 2025.

STATE OF WISCONSIN  
DIVISION OF HEARINGS AND APPEALS  
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By: \_\_\_\_\_  
Angela Chaput Foy  
Administrative Law Judge

### NOTICE

Set out below is a list of alternative methods available to persons who may wish to obtain review of the attached decision of the Division. This notice is provided to insure compliance with Wis. Stat. § 227.48 and sets out the rights of any party to this proceeding to petition for rehearing and administrative or judicial review of an adverse decision.

1. Any person aggrieved by the attached order may within twenty (20) days after service of such order or decision file with the Division of Hearings and Appeals a written petition for rehearing pursuant to Wis. Stat. § 227.49. Rehearing may only be granted for those reasons set out in Wis. Stat. § 227.49(3). A petition under this section is not a prerequisite for judicial review under Wis. Stat. §§ 227.52 and 227.53.
2. Any person aggrieved by the attached decision which adversely affects the substantial interests of such person by action or inaction, affirmative or negative in form is entitled to judicial review by filing a petition therefore in accordance with the provisions of Wis. Stat. §§ 227.52 and 227.53. Said petition must be served and filed within thirty (30) days after service of the agency decision sought to be reviewed. If a rehearing is requested as noted in paragraph (1) above, any party seeking judicial review shall serve and file a petition for review within thirty (30) days after service of the order disposing of the rehearing application or within thirty (30) days after final disposition by operation of law. Any petition for judicial review shall name the Division of Hearings and Appeals as the respondent. The Division of Hearings and Appeals shall be served with a copy of the petition either personally or by certified mail. The address for service is:

DIVISION OF HEARINGS AND APPEALS  
4822 Madison Yards Way, Fifth Floor  
Madison, Wisconsin 53705

Persons desiring to file for judicial review are advised to closely examine all provisions of Wis. Stat. § 227.52 and 227.53 to insure strict compliance with all its requirements.