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Satter v. Idaho Transporation Department Respondent's Brief Dckt. 48120

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IN THE SUPREME COURT OF THE STATE OF IDAHO

RYAN PATRICK SATTER, Petitioner-Appellant. vs. STATE OF IDAHO TRANSPORTATION DEPARTMENT, Respondent.	Docket No. 48120-2020 **RESPONDENT'S BRIEF** Nez Perce County District Court CV35-19-2167

BRIEF OF RESPONDENT

THE HONORABLE JAY P. GASKILL
District Judge

JUDICIAL REVIEW FROM THE IDAHO DEPARTMENT OF TRANSPORTATION

SKIP CARTER
HEARING OFFICER

Paul Thomas Clark
Attorney at Law
1229 Main Street
PO Drawer 285
Lewiston, ID 83501

Attorney for Petitioner-Appellant

Susan K. Servick
Special Deputy Attorney General
1424 Sherman Ave., #300
Coeur d'Alene, ID 83814

Attorney for Respondent

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II. STATEMENT OF THE CASE

A. Nature of the Case

This is a response brief of the Idaho Transportation Department (ITD). Petitioner Ryan Satter (Satter) requests this Court to reverse the decision of the District Court, who determined that the requirements of Idaho Code Section 18-8002A were met and that Satter's driving privileges should be suspended for ninety (90) days.

B. Course of Proceedings

Satter was arrested on November 3, 2019 and issued a Notice of Suspension. *R., at 4-5.* On or about November 8, 2019 Satter, through counsel, requested a hearing with ITD. *R., at 15-18.* The hearing was held on November 27, 2019. *R., at 53.* On December 4, 2019 the hearing officer issued his decision upholding the ninety (90) day administrative license suspension beginning on December 3, 2019 through March 2, 2020. *R., 53-62.* The Petition for Judicial Review was filed on or about December 4, 2019. *CR, at 5.* On December 5, 2019, the District Court issued an Order staying the license suspension pending this appeal. *CR., at 21-22.* Oral argument was heard by the District Court on May 26, 2020 and the District Court issued its Memorandum Opinion and Order on Jun 19, 2020 upholding the decision of the hearing officer. *CR., at 52-60.*

C. Statement of Facts

On November 3 2019, Officer Fox observed a vehicle driven by Satter with a passenger headlight that was not working. The officer also observed the vehicle making slow turns and swerving within its lane. The officer initiated a traffic stop. The officer identified Satter and suspected Satter had been drinking. The officer conducted field sobriety tests, which Satter failed. *R., at 10-11.* The officer read Satter his rights via Idaho Code Section 18-8002. *R., Exhibit J (DVD).* During the relevant portion of the reading, Officer Fox stated:

> "... *You have the right to an Administrative Hearing on the suspension before the Idaho Department of Transportation Department to show cause why you failed the evidentiary testing and fail to pass the testing and do not....* Okay, I'm going to start over. *You have the right to an Administrative Hearing on the suspension before the Idaho Transportation Department to show why you failed the evidentiary test and why your license should not be suspended....*

R., Exhibit J. Then the officer gave Satter breath tests. Satter failed the breath tests (.123/.129). *R., at 6.* Satter was issued a "Suspension and Mandatory Ignition Interlock Advisory" (also called a Notice of Suspension) and was arrested for DUI. *Id.*

III. ISSUES PRESENTED

A. Was Satter substantially informed of the consequences of refusal and failure of the test as required by law?

B. Was the omission to the word "cause" in the re-reading of the advisory a mild misstatement or passing inadequacy?

C. Was the hearing officer's decision made upon a lawful procedure?

IV. STANDARD OF REVIEW

The administrative license suspension (ALS) statute, I.C. § 18-8002A, requires that the ITD suspend the driver's license of a driver who has failed a BAC test administered by a law enforcement deputy. *Bennett v. State, Dept. of Transp., 147 Idaho 141, 206 P.3d 505 (Idaho App. 2009).* The period of suspension is ninety days for a driver's first failure of an evidentiary test and one year for any subsequent test failure within five years. I.C. § 18-8002A(4)(a). A person who has been notified of an ALS may request a hearing before a hearing officer designated by the ITD to contest the suspension. I.C. § 18-8002A(7). At the administrative hearing, the burden of proof rests upon the driver to prove any of the grounds to vacate the suspension. I.C. § 18-8002A(7); *Kane v. State, Dep't of Transp.*, 139 Idaho 586, 590, 83 P.3d 130, 134 (Ct.App.2003). The hearing officer must uphold the suspension unless he or she finds,

by a preponderance of the evidence, that the driver has shown one of several grounds enumerated in I.C. § 18-8002A(7) for vacating the suspension. Those grounds include:

> (a) The peace officer did not have legal cause to stop the person; or
> (b) The officer did not have legal cause to believe the person had been driving or was in actual physical control of a vehicle while under the influence of alcohol, drugs or other intoxicating substances in violation of the provisions of section 18-8004, 18-8004C or 18-8006, Idaho Code; or
> (c) The test results did not show an alcohol concentration or the presence of drugs or other intoxicating substances in violation of section 18-8004, 18-8004C or 18-8006, Idaho Code; or
> (d) The tests for alcohol concentration, drugs or other intoxicating substances administered at the direction of the peace officer were not conducted in accordance with the requirements of section 18-8004(4), Idaho Code, or the testing equipment was not functioning properly when the test was administered; or
> (e) The person was not informed of the consequences of submitting to evidentiary testing as required in subsection (2) of this section.

I.C. § 18-8002A(7). The hearing deputy's decision is subject to challenge through a petition for judicial review. I.C. § 18-8002A(8); *Kane,* 139 Idaho at 589, 83 P.3d at 133.

The Idaho Administrative Procedures Act (IDAPA) also governs the review of department decisions to deny, cancel, suspend, disqualify, revoke, or restrict a person's driver's license. *See* I.C. §§ 49-201, 49-330, 67-5201(2), 67-5270. ITD has adopted IDAPA rules for ALS suspensions. See IDAPA 39.02.72.00, et seq. ALS appeals are also governed by the Idaho Rules of Administrative Procedure of the Attorney General. See IDAPA 39.02.72.003. IDAPA 04.11.01.052 provides for liberal construction of the rules and states:

> The rules in this chapter will be liberally construed to secure just, speedy and economical determination of all issues presented to the agency. Unless prohibited by statute, the agency may permit deviation from these rules when it finds that compliance with them is impracticable, unnecessary or not in the public interest. Unless required by statute, the Idaho Rules of Civil Procedure and the Idaho Rules of Evidence do not apply to contested case proceedings conducted before the agency. (7-1-93)

In *Bennett v. State Department of Transportation*, 147 Idaho 141, 206 P.3d 505 (Ct App 2009), the Court of Appeals restated the necessary standard of review for the Court reviewing the decision of the hearing deputy. The Court of Appeals stated, in pertinent part:

> This Court does not substitute its judgment for that of the agency as to the weight of the evidence presented. I.C. § 67-5279(1); *Marshall,* 137 Idaho at 340, 48 P.3d at 669. This Court instead defers to the agency's findings of fact unless they are clearly erroneous. *Castaneda v. Brighton Corp.,* 130 Idaho 923, 926, 950 P.2d 1262, 1265 (1998); *Marshall,* 137 Idaho at 340, 48 P.3d at 669. In other words, the agency's factual determinations are binding on the reviewing court, even where there is conflicting evidence before the agency, so long as the determinations are supported by substantial competent evidence in the record. *Urrutia v. Blaine County, ex rel. Bd. of Comm'rs,* 134 Idaho 353, 357, 2 P.3d 738, 742 (2000); *Marshall,* 137 Idaho at 340, 48 P.3d at 669.
>
> A court may overturn an agency's decision where its findings, inferences, conclusions, or decisions: (a) violate statutory or constitutional provisions; (b) exceed the agency's statutory authority; (c) are made upon unlawful procedure; (d) are not supported by substantial evidence in the record; or (e) are arbitrary, capricious, or an abuse of discretion. I.C. § 67-5279(3). The party challenging the agency decision must demonstrate that the agency erred in a manner specified in I.C. § 67-5279(3) and that a substantial right of that party has been prejudiced. *Price v. Payette County Bd. of County Comm'rs,* 131 Idaho 426, 429, 958 P.2d 583, 586 (1998); *Marshall,* 137 Idaho at 340, 48 P.3d at 669. If the agency's decision is not affirmed on appeal, "it shall be set aside . . . and remanded for further proceedings as necessary." I.C. § 67-5279(3).

Id., at 506-507. Therefore, the burden is on the petitioner to establish that ITD erred in a manner specified in Idaho Code Section 67-5279(3) *and* then establish that a substantial right has been prejudiced. This issue was discussed by the Court of Appeal in *State of Idaho v. Kalani-Keegan*, 155 Idaho 297, 311 P.3d 309 (Ct. App. 2013) where the Court stated:

> It is well established that the party challenging an agency decision must demonstrate the agency erred in a manner specified in I.C. § 67-5279(3) and that a substantial right of that party has been prejudiced. *Wheeler v. Idaho Dep't of Health & Welfare*, 147 Idaho 257, 260, 207 P.3d 988, 991 (2009).
>
> Further, nothing in IDAPA requires the courts to address these two requirements in any particular order. *Hawkins v. Bonneville Cnty. Bd. of Comm'rs,* 151 Idaho 228, 232, 254 P.3d 1224, 1228 (2011). Therefore, an agency's decision may be affirmed solely on the grounds that the petitioner has not shown prejudice to a substantial right. Id. In other

words, the courts may forego analyzing whether an agency erred in a manner specified by I.C. § 67-5279(3) if the petitioner does not show that a substantial right was violated. Id.

Id., at page 313.

V. ARGUMENT

A. SATTER WAS SUBSTANTAILLY INFORMED OF THE CONSEQUENCES OF REFUSAL AND FAILURE OF THE TEST

Satter argues that the court should reverse the decision of the District Court because Satter was not accurately informed of his rights prior to the evidentiary testing. First, he argues that the advisory was not accurate. Second, he argues that stating that "to show why" was not convey the correct legal standard of "to show cause why". For the reasons discussed herein, the arguments are without legal and factual merit.

Here, the officer read the advisory to Satter. [1]During the relevant portion of the reading, Officer Fox stated:

> "... *You have the right to an Administrative Hearing on the suspension before the Idaho Department of Transportation Department to show cause why you failed the evidentiary testing and fail to pass the testing and do not....* Okay, I'm going to start over. *You have the right to an Administrative Hearing on the suspension before the Idaho Transportation Department to show why you failed the evidentiary test and why your license should not be suspended....*

R., Exhibit J. As noted, Officer Fox correctly advised Satter of the standard on the first reading ("to show cause why"), then omitted the word "cause" on the second re-reading of the advisory. As such, Satter was substantially informed of the language found in Idaho Code Section 18-8002A(2).

[1] The driver's attorney transcribed parts of the audio recording and the relevant reading by the officer is located on page 8 of the transcript. *See Ag. Rec., Ex. I, page 45.*

Idaho Law. Idaho law requires that when a person is requested to take an evidentiary test the person must be advised of their rights. Idaho Code Section 18-8002A(2). But Idaho law provides that the person shall be "substantially" informed and that he "need not be informed verbatim." Idaho Code Section 18-8002A(2) provides the following.

> **Information to be given.** At the time of evidentiary testing for concentration of alcohol or for the presence of drugs or other intoxicating substances is requested, the person shall be informed that if the person refuses to submit to or fails to complete evidentiary testing, or if the person submits to and completes evidentiary testing and the test results indicate an alcohol concentration or the presence of drugs or other intoxicating substances in violation of section 18-8004, 18-8004C or 18-8006, Idaho Code, **the person shall be informed substantially as follows (but need not be informed verbatim):**
>
> * * *
>
> (b) You have the right to request a hearing within seven (7) days of the notice of suspension of your driver's license **to show cause why** you refused to submit to or to complete and pass evidentiary testing and why your driver's license should not be suspended;

Idaho Code Section 18-8002A(2). (Emphasis added). As previously stated, the information contained in Idaho Code Section 18-8002A(2) was read to SATTER.

In Idaho, a Section 18-8002A license suspension must be vacated if an officer fails to inform the licensee of certain information, as required by the statute, prior to evidentiary testing. I.C. § 18-8002A(7)(e); *Bell v. Idaho Transp. Dep't*, 151 Idaho 659, 664, 262 P.3d 1030, 1035 (2011); *State v. Kling*, 150 Idaho 188, 192, 245 P.3d 499, 503 (Ct. App. 2010). Here, there is no dispute that in the advisory read to Satter contained all the information contained in Idaho Code Section 18-8002A(2). Therefore, the information read to Satter complied with Idaho law.

Idaho Code Section 18-8002A and judicial decisions preclude suspension of a driver's license if the officer does not strictly comply with the statutory directives concerning the advisory information to be given to motorists when a BAC test is requested. There are several

Idaho cases which have vacated a license suspension because the police officer (verbally or by way of a faulty verbal advisory) provided the driver with inaccurate information.

In *Cunningham v. State*, 150 Idaho 687, 249 P.3d 880 (Ct. App. 2011) the officer verbally conveyed incorrect information to the driver which did not comport with Idaho Code Section 18-8002(3). The Court of Appeals explained the facts in *Cunningham* as follows:

> The officer in this case provided a written advisory form and played a recording for Cunningham, which conveyed the information required under the statute. However, in response to Cunningham's questions regarding the consequences of refusing testing, the officer repeatedly asserted that, if Cunningham refused to cooperate, he would lose his driver's license for one year, without exception. In addition, in response to Cunningham's question regarding whether he could obtain an additional evidentiary test, the officer stated that Cunningham had to wait until he bonded out of jail to obtain such a test. Finally, the officer reiterated that, if Cunningham refused to cooperate, he would lose his chance to prove his innocence. Based on the recording of this exchange and the officer's testimony at the hearing, the magistrate determined that the officer conveyed incorrect information regarding Cunningham's rights and duties should he refuse to submit to evidentiary testing.

Id., at 691, 249 P.3d at 885. The Court of Appeals declined to uphold the license suspension and reasoned as follows:

> Based on the specific facts of this case, we conclude that the information provided to Cunningham did not comport with that required by I.C. § 18-8002(3) and, therefore, rendered the written and recorded advisory given to Cunningham incomplete. As mentioned above, the officer incorrectly asserted that Cunningham would immediately lose his license should he refuse to submit to testing, that he could only obtain additional evidentiary testing after bonding out of jail, and that he must prove his innocence to the judge at the show cause hearing. The officer conveyed such incorrect information after notifying Cunningham that he " specialized" in DUI testing and that he instructed officers on how to properly administer field sobriety tests. In addition, before answering any of Cunningham's questions, the officer stated that he would explain what the Idaho Code required and what Idaho courts have said about the consequences of a refusal. The officer was adamant that the information he conveyed to Cunningham was the law, even if such information contradicted what was previously contained in the written and recorded advisory. The officer's continuous, repetitive recitation of incorrect information regarding the consequences for refusal rendered the initial advisory incomplete.
>
> We do not intend the holding of this case to require officers to stand mute when answering a driver's questions regarding the information contained in the implied consent advisory. However, the officer's conduct in this case so contradicted the information

> provided in the initial advisory that it defeated the purpose of the statute's requirement for such an advisory in the first place. Here, the officer's repeated assertions went beyond mild misstatements or passing inaccuracies, which may occur during an advisory involving a presumably intoxicated driver. The magistrate was therefore correct in declining to suspend Cunningham's driver's license. Thus, we reverse the district court's decision and vacate the suspension of Cunningham's license.

Id.

The Hearing Officer correctly rejected the argument that the Court's decision in *Cunningham* required that the license suspension be vacated. The Hearing Officer wrote:

> 5. In the *In re Cunningham*, 150 Idaho 687 (App. 2011), decision, the Idaho Court of Appeals ruled that "...[T]he officer's continuous, repetitive recitation of incorrect information regarding the consequences for refusal rendered the initial advisory incomplete." The officer in the *Cunningham* case told Cunningham that the BAC test was the "only opportunity to prove his innocence" and if he refused to take the test his driver's license would be "automatically suspended for one year without exception."
> 6. In this matter, Officer Fox did not give Satter continuous, repetitive recitation of incorrect information that was described in *Cunningham*. Section 2 of 18-8002A indicates that the information conveyed "need not be verbatim" and given the totality of the circumstances the omitted word of "cause" did not have the same impact that the improper statutory language had in *Virgil*.

CR., at 15. The analysis of the Hearing Officer supported his legal conclusion that "[b]ased on the record and the applicable caselaw, Satter was properly advised of the consequences of refusing or failing evidentiary testing as required by Idaho Code §18-8002 and Idaho Code 18-8002A. *CR., at 16.*

In summary, the verbal advisory given to Satter is distinguishable from *Cunningham.* Officer Fox did not give repeated assertions of Idaho law. Officer Fox did not make continuous, repetitive recitations of incorrect information. At most, Officer Fox made a mild misstatement and/or passed an inaccurate statement when he left out the word "cause" on the re-reading of the advisory. The misstatement by Officer Fox was not sufficient to vacate the license suspension.

In the case of *In the Matter of Virgil*, 126 Idaho 946, 895 P.2d 182 (Ct. App. 1995), the Court affirmed the reinstatement of a driver's license when the written advisory incorrectly stated that the driver would be required to "explain why" he had refused an evidentiary test, when the statute required that the driver was required to "show cause" for his refusal. In *Virgil* the Court of Appeals held that Virgil was not properly advised pursuant to I.C. Section 18-8002(3), because the written advisory used by police "did not properly advise Virgil of his rights and duties under Idaho's implied consent statute, I.C. Section 18-8002." The Court of Appeals explained:

> Virgil also challenges paragraph (4)(b) of the advisory form, which notifies the driver as follows: "You have a right to submit a written request within seven (7) days to the Magistrate Court of Twin Falls County for a hearing to explain why you refused to take the tests" (emphasis added). Virgil contends that this provision incorrectly advised him of his burden of proof under I.C. § 18-8002(3)(b). Idaho Code § 18-8002(3)(b) states that a driver whose license is seized must be informed that he or she has "the right to request a hearing within seven (7) days to show cause why he refused to submit to, or complete evidentiary testing" (emphasis added). Virgil argues that the phrase, "explain why," communicates a lower burden of proof than the phrase, "show cause." He also asserts that the latter phrase connotes legal justification or proof which is not conveyed by the phrase, "explain why." We agree.
>
> Our Supreme Court has stated that the term, "cause," as contemplated by I.C. § 18-8002(3)(b), envisions "something more than any reason." Griffiths, 113 Idaho at 372, 744 P.2d at 100, citing State v. Ankney, 109 Idaho 1, 704 P.2d 333 (1985). The driver "must establish cause of a sufficient magnitude that it may be fairly said that a suspension of his license would be unjust or inequitable." Id.; see also Matter of Goerig, 121 Idaho 26, 29, 822 P.2d 545, 548 (Ct.App.1991) ("The burden of proof rests on the defendant to prove physical inability to take the test or to establish another cause of sufficient magnitude to refuse to take the test."). We conclude that the phrase, "show cause," more accurately conveys the driver's burden of proof at the suspension hearing than does the phrase, "explain why." Because the requirements of I.C. § 18-8002(3) are recited "in no uncertain terms," Beem, supra, and drivers must be "completely" advised of their rights and duties under that provision, Griffiths, supra, we hold that Virgil was not properly advised pursuant to I.C. § 18-8002(3).

Id. at 948, 895 P.2d at 184. The Hearing Officer correctly rejected the argument that the Court's decision in *Virgil* was applicable. The hearing officer stated the following:

2. Counsel for Satter argues Officer Fox did not properly inform Satter regarding the consequences of refusing or failing evidentiary testing when he stopped during the reading of the advisory form and said "show why you failed the evidentiary test" instead of "show cause why you failed an evidentiary test." Counsel contends the *Virgil v. State* decision, 126 Idaho 946 (App. 1995), emphasized the difference between the words "explain why" vs. "show cause" in the statutory language found in the suspension advisory.
3. *Virgil* ruled that the 1995 statutory language regarding refusals in Section 18-8002(3) containing the phrase "explain why" was a lower burden of proof that the phase "show cause." However, the *Virgil* ruling pertained to the statutory language and Suspension Advisory in use at the time. Both have been amended, as shown by Exhibit 1, a copy of the Suspension Advisory read by Officer Fox and provided to the Petitioner at the scene. Officer Fox read Part 3(B) correctly and said "...show cause why you failed the evidentiary testing" and then lost his place. In rereading the same section, Officer Fox inadvertently omitted the word "cause" in his reading.

CR., at 13.

Here, Satter was not incorrectly advised of the burden of proof. Officer Fox told Satter in the first reading that he [Satter] was required to "show cause why". Therefore, Satter was substantially advised of his rights and duties as required by Idaho law.

B. THE OMISSION OF THE WORD "CAUSE" IN THE RE-READING OF THE ADVISORY WAS A MILD MISSTATEMENT OR PASSING INADEQUACY

Here, Satter was initially advised to "show cause why" and then to "show why" he failed the evidentiary test. The District Court found that "the difference between 'show why' and 'show cause why' is not so great as to warrant reinstating Satter's driving privileges." The District Court went on to explain its reasoning as follows:

> In *Virgil*, the court agreed with the driver that "[T]he phrase, 'explain why,' communicates a lower burden of proof than the phrase, 'show cause.' He also asserts that the latter phrase connotes legal justification or proof which is not conveyed by the phrase, 'explain why.'" *Id.* The difference between "explain why" and "show cause" was too great for the court to ignore this improper advisory, especially since it was used both in the written form provided the driver and when read aloud.
>
> Unlike *Virgil*, there is only a minimal difference between the significance of "show why" and "show cause why." While the word *cause* indisputably has an important legal connotation, *show* also has a much stronger meaning than *explain.* "Explain"

suggests that nearly any reason given, without additional proof, is sufficient to rescind a license suspension. "Show" asks more of a driver, and is understood to require additional evidence of their reasoning. Because these two phrases are fundamentally different, a different outcome than *Vigil* is warranted here.

If the phrase "show cause" was never presented to Satter in the advisory, this decision would be the same. "Show why," especially following the use of "show cause why," does not fundamentally change the statutory language, and does not render the advisory defective.

CR., at 57-58. Finally, the District Court specifically rejected Satter's argument. The District Court found the following:

> Here, the arresting officer correctly said "show cause why" the first time he read the advisory, but after misspeaking on another part of the sentence, started over and said "show why." While *Virgil* does call for strict adherence to the statute, and specifically keys in on the phrase "show cause," the facts here are distinguishable and call for a different result. In *Virgil*, the driver never received a proper advisory, whereas here language in question was read correctly to Satter once and provided to him in written form. See *Virgil,* 126 Idaho at 948, 895 P.2d at 184. Because there were two instances of the correct language used while advising Satter, we turn instead to whether the statement could be considered a mild misstatement or something more.

R., at 55-66. The District Court continued "the misreading of one word by the arresting officer was a passing inaccuracy, and does not render the advisory incomplete." *R., at 57.* The District Court stated:

> His omission of the word "cause" can be chalked up to a reading error, and Satter has not present sufficient evidence that the omission of "cause" rendered by his advisory incomplete. The slip by the officer falls into the passing inaccuracy category, and does not render the advisory incomplete under Cunningham.

R., at 57.

C. NO UNLAWFUL PROCEDURE

Satter argues that he was not substantially informed of his rights pursuant to Idaho Code section 18-8002 and 18-8002A, therefore it was an "invalid advisory form" and based upon a lawful procedure. In effect, Satter argues that because the method of recitation of the advisory

was incomplete, it was based upon an unlawful procedure. This argument was rejected by the Hearing Officer and by the District Court.

The Hearing Officer rejected this argument when he wrote:

> In this matter, Officer Fox did not give Satter continuous, repetitive recitation of incorrect information that was described in *Cunningham*, Section 2 of 18-8002A indicates that the information conveyed "need not be verbatim" and give the totality of the circumstances the omitted word of "cause" did not have the same impact that the improper statutory language had in *Virgil*.

The District Court also declined to accept the argument of an unlawful procedure. The District Court wrote "Satter's argument relies on a finding that he was not substantially informed of his rights pursuant to Idaho Code Sections 18-8002 and 18-8002A." As previously discussed, Satter was substantially informed of his rights.

Furthermore, if Satter's argument is that the procedure was unlawful because of the "impact" on Satter, the District Court did not accept this argument. The District Court correctly held:

> Neither *Virgil* nor the ALS hearing was the case decided on the impact to the driver, but the impact of the effectiveness of the advisory itself. In *Virgil* and *Cunningham*, the impact described is the effectiveness of the advisory, not the driver's reliance on the information. As explained above, the advisory here was complete and as such, the Hearing Officer did not decide the case based upon an unlawful procedure.

CR., at 58-59.

In summary, the method used for the advisory does not render the procedure unlawful. The focus must be on the effectiveness of the advisory. When the Court finds that the advisory was complete, then the advisory is also effective and there is no unlawful procedure.

CONCLUSION

In conclusion, the misreading of one word in the advisory does not render the advisory incomplete or invalid. ITD respectfully requests that the Court uphold the decision of the District Court and uphold the license suspension and lift the order staying the license suspension.

Dated this 4 of December 2020.

Susan K. Servick, SDAG

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 4 of December 2020, I caused to be served a true and correct copy of the foregoing by the method indicated below, and addressed to the following:

PAUL THOMAS CLARK
CLARK AND FEENEY, LLP
1229 Main Street
PO Box 285
Lewiston, ID 83501
Fax: (208) 743-9516
Email: darla@clarkandfeeney.com

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Susan K. Servick