



**LORAIN COUNTY COURT OF COMMON PLEAS
LORAIN COUNTY, OHIO**

**TOM ORLANDO, Clerk
JOURNAL ENTRY
John R. Miraldi, Judge**

Date 12/19/16

Case No. 16CV190159

HAROLD W PARKS

Plaintiff

ROBERT J GARGASZ

Plaintiff's Attorney

(440)960-1670

VS

BUREAU OF MOTOR VEHICLES

Defendant

TRISTA M TURLEY

Defendant's Attorney

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ENTRY AND ORDER ON ADMINISTRATIVE APPEAL

This action is an administrative appeal filed by Appellant Harold Parks from a decision of the Ohio Department of Public Safety, Bureau of Motor Vehicle (BMV) suspending appellant's driver's license.

From the record, it appears that Appellant Parks' physician submitted an initial confidential report to the BMV indicating that appellant should no longer drive due to a medical condition. It appears that the BMV received a doctor's report on or about June 2, 2016 indicating that appellant should not retain his driving privileges due to a medical condition. The release for this information was not signed by appellant but by one "Patricia A. Rogala."¹ See, Record, Exhibit 7. Upon receiving this information, Appellee BMV generated a form 2310 to Appellant requesting the statement of his physician relative to his ability to drive. It appears that Appellant executed this same 2310 form on or about June 21, 2016 and it was completed and returned to the BMV by his physician. The form bears appellant's signature authorizing the release of his medical information (including physical and mental condition) to the BMV. See, R. Ex.5.

¹ The record does not indicate who Patricia Rogala is or her relationship to appellant. However, Exhibit 4 indicates that the BMV treated the submission of this form as a letter of concern and then sent appellant another form 2310 for execution.





Appellant's physician returned to the form 2310 to the BMV indicating that "This patient **should not be permitted to** retain driving privileges."² Emphasis in original. Appellant did not request a hearing. Thereafter, on July 27, 2016 the BMV suspending appellant's license acting upon information contained in his physician's report on form 2310. Appellant Parks appealed the BMV's decision to suspend his driver's license. In part, appellant asks the court to strike the medical evidence contained in the certified record and which forms the basis for the BMV's decision.

When considering an administrative appeal of a decision revoking or suspending a driver's license, the appropriate standard is set forth in R.C. §119.12(M). This section provides in part:

The court may affirm the order of the agency complained of in the appeal if it finds, upon consideration of the entire record and any additional evidence the court has admitted, that the order is supported by reliable, probative, and substantial evidence and is in accordance with law. In the absence of this finding, it may reverse, vacate, or modify the order or make such other ruling as is supported by reliable, probative, and substantial evidence and is in accordance with law.

Appellant Parks takes issue with the confidential tip that set off the BMV's inquiry into appellant's medical condition and asks that the court strike appellant's medical information from the record. The court declines to do so. In the notification letter sent to Appellant Parks on June 15, 2016, he was informed of his right to an adjudication hearing if he submitted a request for such a hearing within thirty days of the date of mailing of the notice. See, R.Ex.6. There is no evidence in the record before the court that appellant requested such a hearing. The notice provides that the purpose of the hearing is "to allow you to give evidence, whether oral or written, showing why your driver's license and driving privileges should not be suspended." *Id.*³

Further, there is no evidence that at any time appellant objected to the release of his medical information. The only evidence in the record is the appellant's signature *specifically authorizing* the release of his medical information from his physician to the BMV. Lastly, the revised code specifically permits the submission of a patient's records by a physician without violating the physician-patient privilege. See, R.C. §4507.20.

The Ohio Administrative Code permits the BMV to receive information, such as occurred in this case, which would support good cause for the registrar to believe that the licensee is incompetent or otherwise not qualified to operate a motor vehicle:

² Because the record contains sensitive medical information, the court will refer to the forms, but will not include that information in its opinion, which is in the record and filed under seal.

³ The notice further advised appellant that he could appear in person, through an attorney or other representative and could provide information regarding his position, argument and contention either orally or in writing.





The registrar of motor vehicles * * * having good cause to believe that the holder of a driver's or commercial driver's license is incompetent or otherwise not qualified to be licensed, shall upon written notice of at least five days, * * * require him or her to submit to a physical exam or to a driver's license examination * * *. Good cause shall be established by a report of a peace officer; by a report of a court; by information from a physician, a nurse, a relative of the licensee, or a friend of the licensee; or by a court order. * * * In no case shall a report be accepted if it appears that the sole basis is the age of the licensee. Information received from a nurse, a relative of the licensee, or a friend of the licensee shall not be accepted unless it is corroborated in essential details by an investigation performed by the bureau of motor vehicles. No information shall be received anonymously. * * *

See, Ohio Adm. Code §4501:1-1-01. The initial communication to the BMV appears to have been signed by a physician, although that information is redacted in the documents filed with the court. What is not redacted is the medical condition upon which the proposed driving prohibition is based. This diagnosis supports a finding of good cause for the further investigation and submission of the request for a physical exam. It is also clear from the record that the inquiry was not based solely upon the appellant's age. The record indicates that the BMV chose to treat this initial report as a letter of concern whereupon it commenced the "investigation" authorized (and required) by the administrative code when the report is that of a relative or friend. *Id.* In doing so, the BMV was following the requirements of Ohio's Administrative Code, and therefore, the information it obtained was not contrary to law.

Thereafter, Appellant Parks signed a release on form BMV 2310 authorizing his physician to release his medical information the BMV. See, R.Ex. 5. The form, completed by appellant's physician set forth the medical diagnosis upon which the BMV ultimately made the decision to suspend appellant's license. The form is signed by appellant's physician as well.

The BMV also has an interest in maintaining the safety of the motoring public, and the court finds that its decision in this matter comports with that exercise of its power to control automobile traffic. See, *Doyle v. Bureau of Motor Vehicles*, 51 Ohio St.3d 46, 51, 554 N.E.2d 97 (1990)(finding that the BMV is authorized to promulgate rules, such as those set forth in the administrative code, in order to enforce the revised code, in this case R.C. §4507.20. In addition, such rules are to be given the force and effect of law.) As the Ohio Supreme Court observed in *State v. Hoover*, 123 Ohio St.3d 418, 2009–Ohio–4993, 916 N.E.2d 1056, ¶ 26, quoting *Doyle*, fn. 6:

The state has the right under its sovereign power to control automobile traffic by reasonable regulations of the circumstances under which its citizens may be





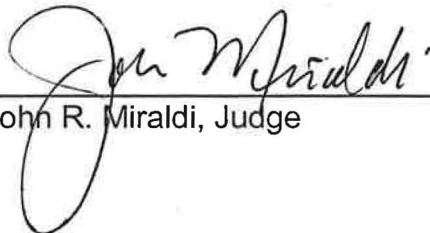
licensed to operate a motor vehicle and to adopt appropriate provisions to insure competence and care on the part of licensees, to protect others using the highways; and any appropriate means adopted does not deny to a person subject to its provisions any constitutional rights under the Constitution of the United States or the state of Ohio.

It appears to the court that appellee followed its procedures and Ohio law in making its determination to suspend appellant's license. Revised Code §4507.20 requires the licensee to demonstrate his fitness to drive; the statute does not require the state to prove the licensee is unfit to drive. See, *Gurish v. Bureau of Motor Vehicles*, Cuyahoga App. 90860, 2012 WL 3862128 (8th Dist.).

Upon review of the record before it, including the physician's diagnosis upon which the suspension was initiated, the court finds that the decision of the BMV to suspend Appellant Parks' driver's license was supported by reliable, probative, and substantial evidence and is in accordance with law. The decision of the Ohio Department of Public Safety, Bureau of Motor Vehicles is hereby affirmed.

IT IS SO ORDERED.

VOL _____ PAGE _____



John R. Miraldi, Judge

cc: All Parties

**TO THE CLERK: THIS IS A FINAL
APPEALABLE ORDER
PLEASE SERVE UPON ALL PARTIES NOT IN
DEFAULT FOR FAILURE TO APPEAR,
NOTICE OF THE JUDGMENT AND
ITS DATE OF ENTRY UPON THE JOURNAL.**

