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AT \_\_\_\_\_ O'Clock \_\_\_\_\_ M  
CLERK OF DISTRICT COURT

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Deputy

**IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE  
STATE OF IDAHO IN AND FOR THE COUNTY OF KOOTENAI**

**MICHAEL JAMES MYHRE,** )  
 )  
 ) *Petitioner,* )  
 )  
 vs. )  
 )  
 ) **STATE OF IDAHO, DEPARTMENT OF** )  
 ) **TRANSPORTATION,** )  
 )  
 ) *Respondent.* )  
 )  
 \_\_\_\_\_ )

Case No. **CV 2010 1966**

**MEMORANDUM DECISION AND  
ORDER ON: PETITION FOR REVIEW  
OF FINDINGS OF FACT AND  
CONCLUSIONS OF LAW (DRIVER'S  
LICENSE SUSPENSION)**

**I. PROCEDURAL HISTORY AND FACTUAL BACKGROUND.**

This matter is before the Court on the Petition for Judicial Review of petitioner, Michael Myhre (Myhre), filed March 10, 2010. Myhre asserts the administrative hearing officer's Order sustaining his license suspension was based on erroneous findings and conclusions, unsupported by substantial evidence, and arbitrary and capricious. Brief in Support of Petition for Review, p. 2.

Myhre was arrested and charged with Driving Under the Influence and Failure to Notify Upon Striking Fixture Adjacent to Roadway. Early in the morning on November 6, 2009, a postal carrier noticed a row of mailboxes had been struck by a vehicle and vehicle debris, including a license plate, remained at the scene. The postal carrier contacted law enforcement reporting a hit and run, and Officer Wessel (Wessel) of the Coeur d'Alene Police Department responded to the scene where he located a vehicle bumper and license plate among other debris. A.R. p. 7. Sergeant McCormick (McCormick) arrived at the address to which the license plate was registered and

located the suspect vehicle in an open garage. *Id.* Wessel matched the license plate recovered from the scene to the one on the vehicle in the garage. *Id.* Both officers attempted to locate the driver of the vehicle by having dispatch telephone the residence and knocking on the doors and windows. *Id.* When Myhre came to the door, the officers noted his glassy, bloodshot eyes. *Id.* The officers then followed Myhre as he went back into the house. Some conversation took place between the officers and Myhre inside Myhre's home, and Myhre then exited his home and the officers followed. *Id.* Once outside, Myhre initially informed the officers he had closed Willie's Bar, where he worked, at approximately 1:00 a.m. and immediately went home. Myhre denied having had anything to drink. *Id.* After performing field sobriety tests on Myhre, which Myhre failed, the officers transported Myhre to the Kootenai County Public Safety Building and advised him of his *Miranda* rights. *Id.*, p. 8. Myhre agreed to answer questions and informed Wessel he had been drinking at Willie's bar, then went to the Iron Horse Bar, and while driving home had drifted off the road and struck the mailboxes. *Id.* Myhre informed Wessel he did not report his striking of the mailboxes because he had been drinking and was scared. Myhre was administered evidentiary breath tests, and the results were .218 and .212. *Id.*

An administrative license suspension (ALS) hearing was held on December 22, 2009, before a hearing officer of the State of Idaho Department of Transportation (State). On February 18, 2010, the hearing officer sustained the one-year suspension of Myhre's license. Myhre timely filed his Petition for Review on March 10, 2010. On April 16, 2010, this Court entered its Order staying Myhre's license suspension pending his appeal.

On May 21, 2010, Myhre filed his "Brief in Support of Petition for Review of

Findings of Fact and Conclusions of Law”. On June 18, 2010, the State filed its “Respondent’s Brief”. Oral argument was held on August 25, 2010.

Myhre seeks an Order of this Court reversing the suspension of his driver’s license, arguing the hearing officer made incorrect findings of fact and conclusions of law because the hearing officer incorrectly states Myhre’s car was “stopped” by Wessel and because the hearing officer concluded the officers lawfully crossed the threshold into Myhre’s home without a warrant or any particularized suspicion that Myhre had committed any crime. Brief in Support of Petition for Judicial Review, p. 5.

## **II. STANDARD OF REVIEW.**

Review of decisions to deny, cancel, suspend, disqualify, revoke, or restrict driver’s licenses is governed by the Idaho Administrative Procedures Act (IDAPA). See I.C. §§ 49-201, 49-330, 67-5201(2), 67-5270. Reviewing Courts review the agency record on appeal independently. *Marshall v. Idaho Dep’t of Transp.*, 137 Idaho 337, 340, 48 P.3d 666, 669 (Ct.App. 2002). But reviewing courts do not substitute their judgment for that of the agency as to weight of the evidence presented. I.C. § 67-5279(1); *Marshall*, 137 Idaho at 340, 48 P.3d at 669. An agency’s findings of fact are deferred to unless they are clearly erroneous. *Castaneda v. Brighton Corp.*, 130 Idaho 923, 926, 950 P.2d 1262, 1265 (1998). 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. *Fischer v. City of Ketchum*, 141 Idaho 349, 109 P.3d 1091, 1094 (2005).

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).

### III. ANALYSIS.

Myhre first argues the hearing officer misinterpreted the facts when the hearing officer found the officer "stopped" Myhre's car. Brief in Support of Petition for Review of Findings of Fact and Conclusions of Law, pp. 4-5. The State characterizes this argument as "misleading". Respondent's Brief, p. 11. The State argues:

Clearly, the statement ["Officer Wessel possessed legal cause for the stop of Myhre's vehicle, and legal cause to contact Myhre." A.R. p. 111] is the heading regarding the "stop" is a reference to Idaho Code Section 18-8002A(7) and the elements required for vacating an administrative license suspension. The statement does not create an error that requires that the hearing officer's order be vacated.

The finding by the hearing officer that "Officer Wessel possessed legal cause for the stop of Myhre's vehicle" is not accurate because there is no evidence in the record that this incident involved a traffic stop. But to conclude, as the Petitioner does that the hearing officer "ignore[d] the nature of the officer's contact with the Petitioner" could not be further from the truth. Other than the misstatement referenced herein, the findings and decision by the hearing officer focused *directly and in detail* on the nature of the contact between Officer Wessel and the Petitioner. Therefore, there was no violation of any substantial right of the Petitioner when the hearing officer referred erroneously to a "legal stop of Myhre's vehicle."

Respondent's Brief, p. 11. This Court finds the hearing officer was mistaken in discussing a "stop" of Myhre's vehicle. However, that singular mistake does not cause the hearing officer's decision to in any way not be supported by substantial competent evidence. That mistake does not indicate that the hearing officer "ignored" the nature of

the officer's contact with Myhre or that the hearing officer failed to understand the evidence presented to him.

Myhre next argues the "threshold" issue:

Given the facts that prior to initiating contact, officer had dispatch run the plate found at the scene at [sic] it came back to petitioner and locating Petitioner's truck in his open garage and noticing that the plate matched, there is clear authority to contact Petitioner, so long as it could be accomplished properly. The officers' authority to seek out Petitioner is undeniable but the unaddressed issue is the conduct of the officers in crossing the threshold of Petitioner's home. Findings 1, (9-13) all occurred after the officers had crossed into Petitioner's home without a warrant and without any probable cause to believe nor particularized suspicion that Petitioner had committed any crime. This was impermissible and all information gathered subsequent to his act should be suppressed.

Brief in Support of Petition for Review, p. 5. Myhre argues the officers were in effect performing a *Terry* stop by following Myhre into his home after he wished to discontinue his contact with them. *Id.*, pp. 6-7. Myhre distinguishes the facts of his case from those in *State v. Robinson*, 144 Idaho 596, 163 P.3d 1208 (Ct.App. 2007), arguing that Robinson's having admitted to drinking before driving the car home from a bar, her slurred speech and the odor of alcohol coming from her, along with the corroborating reports of two witnesses regarding her erratic driving amounted to probable cause for the officers to enter into Robinson's home without a warrant. *Id.*, pp. 9-10. Myhre argues:

For all the officers knew at the time they crossed the threshold into Petitioner's house, Petitioner and the owner of the mailboxes could have been taking down the mailboxes with Petitioner's truck to facilitate replacement with newer posts. While it is likely that Petitioner's truck had knocked over the mail boxes, the bumper was at the scene, the officers had know [sic] way of knowing who was driving or when or if the removal was intentional. Given these facts, the officers did not possess probable cause to believe there was a crime, much less that Petitioner committed any crime.

*Id.*, p. 10. The State responds the hearing officer properly found the warrantless entry in Myhre's home was justified in light of the evidence of two jailable offenses having been committed by Myhre and the reasonable inference that officer safety was at issue when Myhre put his hands into his pockets and walked away from the officers into his home; alternatively, the State argues exigent circumstances existed in the form of the imminent destruction of evidence, "i.e., dissipation of blood-alcohol content."

Respondent's Brief, p. 10. The State also appears to classify the hearing officer's incorrect statement that Petitioner was stopped in his car as a mere "misstatement" and argues the error did not amount to the hearing officer's ignoring the nature of the officer's contact with Myhre. *Id.*, p. 11.

The Fourth Amendment prohibits the police from effecting warrantless, non-consensual entries into individuals' homes for routine, non-exigent arrests. *State v. Finnicum*, 147 Idaho 137, 139, 206 P.3d 501, 503. See also IDAHO CONST. art. I, § 17. "Physical entry of the home is the chief evil against which the wording of the Fourth Amendment is directed." *United States v. United States District Court*, 401 U.S. 297, 313, 92 S.Ct. 2125, 2134 (1972). The state bears the burden, when such a warrantless entry occurs, of demonstrating a well-recognized exception to the warrant requirement applies "or [the entry] was otherwise reasonable under the circumstances." *State v. Reynolds*, 146 Idaho 466, 470, 197 P.3d 327, 331 (Ct.App. 2008), citing *State v. Martinez*, 129 Idaho 426, 431, 925 P.2d 1125, 1130 (Ct.App 1996). One such exception is the exigent circumstances exception, wherein warrantless entry may occur if a compelling need for official action combined with the lack of time to secure a warrant exists. *Michigan v. Tyler*, 436 U.S. 499, 509, 98 S.Ct. 1942, 1949 (1978). An officer's reasonable belief that there is danger to the police or other persons inside or outside the

dwelling is one type of exigency which may justify a warrantless entry. *Minnesota v. Olson*, 495 U.S. 91, 100, 110 S.Ct. 1684, 1690 (1990). Additional exigencies recognized by the courts include: pursuit of a fleeing felon, imminent risk of destruction of evidence, and preventing a suspect from fleeing. *State v. Bunting*, 142 Idaho 908, 912, 136 P.3d 379, 383 (Ct.App. 2006).

In *Robinson*, the Idaho Court of Appeals analyzed the reasonableness of police entry into a home of someone suspected of driving under the influence in order to preserve evidence of blood alcohol levels. 144 Idaho 498, 500-501, 163 P.3d 1208, 1212-1213. The Court reasoned, “the logical implication from the state and federal cases is that jailable misdemeanors are encompassed within the exigent circumstances exception allowing warrantless entry to preserve evidence.” 144 Idaho 496, 500, 163 P.3d 1208, 1212. “[T]he misdemeanor driving under the influence (DUI) offense of which Robinson was suspected, which carries a penalty of up to six months in jail time, I.C. § 18-8005, falls under the category of a jailable offense within the exigent circumstances doctrine.” 144 Idaho 496, 501, 163 P.3d 1208, 1213. The question, then, for this Court is whether justification for the warrantless entry at issue is objectively reasonable under the circumstances. *Id. Robinson* involved police having been contacted regarding what appeared to be an intoxicated driver by two witnesses who followed the vehicle to a residence and identified the vehicle and residence for the officers. 144 Idaho 496, 497, 163 P.3d 1208, 1209. Officers knocked on the door and spoke with the defendant’s cohabitant, the officer asked to speak with the driver of the suspect vehicle and Robinson came to the door and provided her license. 144 Idaho 496, 498, 163 P.3d 1208, 1210. One of the officers then re-contacted Robinson, who was sitting on a love seat approximately four feet from the open door to the residence,

she admitted being at a bar, having a few cocktails, and driving to the residence; both officers who contacted Robinson noted the odor of alcohol and slurred speech. *Id.* Robinson refused the officers' requests to enter and perform field sobriety tests; she also refused to come outside. *Id.* When Robinson stood and attempted to close the door, the officers told her she was under arrest and entered through the threshold of her residence to take her into custody. *Id.* The magistrate heard Robinson's motion to suppress and held the officers' actions exceeded those allowed by the exigency because the charge involved was only a misdemeanor; the District Court affirmed on intermediate appeal. *Id.* The Court of Appeals reversed, holding exigent circumstances existed "given the serious penalty associated with the DUI offense and specific, articulable facts reasonably indicating imminent destruction of evidence, i.e. dissipation of blood-alcohol content" and that the officers reasonably tailored their response to the scope of the exigency. 144 Idaho 496, 501, 163 P.3d 1208, 1213. "[T]he Fourth Amendment was not offended when officers immediately entered Robinson's home with reasonable cause to prevent destruction of DUI-related evidence." *Id.*

Here, the State first argues that Myhre's placing his hands into his pockets and retreating into his home placed officer safety at issue. Respondent's Brief, p. 10. The threat to officer safety exigency must be supported by reasonable suspicion, which is less than probable cause, but more than mere speculation or instinct on the officer's part. *State v. Ramos*, 142 Idaho 628, 631, 130 P.3d 1166, 1169. (Ct.App. 2005) (applying exigency to the knock-and-announce requirement in executing a search warrant). The hearing officer in this matter concluded:

With Myhre shoving his hands into his pockets, moving into his house and running to the bedroom, a reasonable inference can be drawn that officer safety was of high importance with imminent danger to person, thus forcing and requiring law enforcement to pursue Myhre into the house.

A.R., p. 137, Findings of Fact and Conclusions of Law and Order, p. 13, ¶ 8. Myhre argues that the officers contacted Myhre in his doorway and never made any statements whatsoever with regard to officer safety concerns. Brief in Support of Petition for Review, p. 6. No citation to the Agency Record is made for these claims. This Court has reviewed the testimony of Myhre given before the hearing officer, and Myhre gave no such testimony. Myhre implicitly argues he was disoriented, had just woken up, and was still under the influence of alcohol such that he could not have reasonably been a threat to the officers' safety. Brief in Support of Petition for Review, p. 6. No citation to the Agency Record is made for these claims of Myhre in his memorandum. Myhre did testify that he recalled sleeping, hearing a bunch of pounding, answering the door and doing field sobriety tests in his garage. Tr. p. 31, Ll. 6-16. Myhre did not testify about not being a threat to the officer's safety. This Court is restrained on appeal to uphold the hearing officer's determinations of fact supported by substantial evidence, even when the evidence before the agency below was conflicting. *Fischer*, 141 Idaho 349, 109 P.3d 1091, 1094. The police report, admitted into evidence and considered by the hearing officer, states that after Wessel contacted Myhre at his residence, Myhre turned from Wessel and shoved his hands into his pockets; Wessell identified himself as police and commanded Myhre to show his hands. A.R., pp. 7-8. Myhre staggered back into his house and hit a wall as he turned the corner into his hallway. *Id.*, p. 8. As Wessell and Officer McCormick followed Myhre into the house, he ran into his bedroom. *Id.* It appears Myhre began to run after the officers had already crossed over the threshold into his home, but, nonetheless, Myhre's undisputed intoxicated state and his refusal to show officers his hands is sufficient to raise a reasonable suspicion regarding the existence of a threat to officer safety. Here,

as in *Robinson*, the intrusion into Myhre's home was reasonable under the circumstances in light of the officers only entering into the hall, not following Myhre into his bedroom, and ordering Myhre to come out and talk with them with his hands where the officers could see them. A.R., p. 8. "He walked out of the bedroom, and out to where we were standing. I followed him outside so I could continue my investigation." *Id.* The officers did not conduct a general search of his residence, and followed Myhre out of the residence to perform an investigation, arguably in an area open to police investigation. See *Robinson*, 144 Idaho 496, 502, 163 P.3d 1208, 1214. Given the circumstances, the brief, limited entry of Myhre's home was reasonable.

The State's second or alternative argument is that the exigent circumstance justifying entry into Myhre's home is the imminent destruction of evidence through the dissipation of his blood-alcohol content. Respondent's Brief, p. 10. In this regard, *Robinson* is instructive. The Court of Appeals in *Robinson* noted their holding does not apply to every entry into a home without a warrant to effectuate an arrest in every misdemeanor case. 144 Idaho 496, 503, 163 P.3d 1208, 1215. In addition to a true exigency existing, police must also have requisite probable cause and act pursuant to a statute like I.C. §§ 49-1405 or 19-603(6) or otherwise observe the public offense being committed in their presence. *Id.* *Robinson* does make clear that time is of the essence in effecting DUI arrests and because of the serious penalties associated with DUIs, exigent circumstances exist with regard to destruction of imminent evidence, i.e. the dissipation of blood-alcohol content. 144 Idaho 496, 501-02, 163 P.3d 1208, 1213-14. Myhre argues the police had no probable cause to believe he had committed any crime as they could not have known whether it was Myhre who drove the truck into the mailboxes. Brief in Support of Petition for Review, p. 10. Probable cause to arrest

requires police to possess information which would lead a person of ordinary care and prudence to believe or entertain an honest and strong suspicion that a crime was committed by the arrestee. *State v. Kysar*, 116 Idaho 992, 993, 783 P.2d 859, 860 (1989). A probable cause determination on review depends on the totality of the circumstances and assessment of probabilities given the specific factual context. *State v. Finnicum*, 147 Idaho 137, 140, 206 P.3d 501, 504 (Ct.App. 2009) (citing *Maryland v. Pringle*, 540 U.S. 366, 370-71, 124 S.Ct. 795, 799-800 (2003)). Although the acts of striking the mailboxes and driving under the influence were not committed in the officers' presence, both fall within I.C. § 49-1405, which permits officers to make arrests for serious offenses (including DUI and the failure to stop and/or give information following an accident resulting in damage to any property adjacent to a highway) regardless of whether or not the officer observed the conduct. I.C. §§ 49-1405(b) and (e).

Myhre did not present any evidence below to indicate anyone other than he was the driver of the vehicle which struck the mailboxes. Even before the hearing officer, Myhre's counsel seemed to understand the weakness of a claim to the contrary, as Myhre's counsel argued to the hearing officer:

And the Court [in *State v. Robinson*] – the Court gets down to this; it says: In analyzing whether probable cause existed, this Court must determine whether the facts available to the officers at the moment the seizure occurred warranted the person – warranted a person of reasonable caution to believe that the action taken was appropriate.

And that is where this case falls apart. By the officers' own statements, they had no idea of whether or not Mike was driving that car or not. They simply know that Mike's car – well, I think that they had a reason to believe they had a reasonable hunch that Mike's car was involved in an accident. They found the bumper, they found the license place [plate]. That's how they came and found Mike's house. But they had no idea whether or not it was actually the truck. I think that it's probably pretty obvious that it was since the bumper was there, but they

had no idea if the bumper was placed there by somebody else or not: The tooth fairy, perhaps.

But I tell you, all joking aside, they had absolutely no reason to believe that Mike was driving that car. It could have been anybody. And on that basis, I would respectfully say that Robinson should be distinguished, because Robinson and the cases I've cited before discuss – all discuss situations where probable cause to believe that the person that they're discussing these issues with has committed a crime, and that has given the officers the authority to breach the threshold and come into the house.

These officers breached this threshold with none of the above. I mean, they had a hunch and maybe that hunch was a good one, but it certainly did not rise to the level of probable cause that would allow them to do this.

Tr. p. 59, L. 16 – p. 60, L. 20. There is probable cause in the present case. Again, probable cause to arrest requires police to possess information which would lead a person of ordinary care and prudence to believe or entertain an honest and strong suspicion that a crime was committed by the arrestee. *State v. Kysar*, 116 Idaho 992, 993, 783 P.2d 859, 860 (1989). A probable cause determination on review depends on the totality of the circumstances and assessment of probabilities given the specific factual context. *State v. Finnicum*, 147 Idaho 137, 140, 206 P.3d 501, 504 (Ct.App. 2009).

The vehicle which undisputedly struck the mailboxes (a bumper with a license plate was left at the scene) was registered to Myhre, and that vehicle was found in an open garage in close proximity to the accident scene. No evidence was presented to the hearing officer that any other person was even present at Myhre's residence, before or after the officers arrived. There is no doubt probable cause to arrest for two crimes existed here.

It is not for this Court on appeal to determine whether there was sufficient evidence to create probable cause for the officers to cross the threshold. Even if it were, this Court would find probable cause, in other words, there was evidence, albeit

circumstantial, at the time the officers crossed the threshold, to show that on a more probable than not basis, Myhre was involved in a property damage accident, and was drinking and driving. As to the property damage accident, the circumstantial evidence is overwhelming: Myhre's bumper was left at the scene of the accident with the mailbox, with the license on it, which led the officers to Myhre's house and Myhre's garage, which was open, and in spite of phone calls to Myhre's house and pounding on Myhre's house (which is circumstantial evidence that no one other than Myhre was home) Myhre finally answers the door. At the time of opening the door yet still *before* crossing the threshold, the officers observe conduct that indicates Myhre was drinking, which creates the exigencies addressed in *Robinson*. But all the above is not the standard, as it is not for this Court to make an independent ruling on probable cause. This Court must look at whether the hearing officer's decision that there was probable cause to believe Myhre had committed the crime of leaving the scene of a property damage accident, or driving under the influence, or both, is supported by substantial evidence.

The hearing officer made numerous findings, *inter alia*: Myhre admitted to striking some mailboxes on his drive home; Myhre's testimony on his alcohol consumption was inconsistent and varied over time; and "...Myhre presented no factual evidence proving that he was not driving at the time of the crash, nor did he present any other evidence to refute the assertions of Officer Wessell leading to arrest [sic] his arrest on suspicion of driving under the influence." A.R., pp. 137-139. These findings are supported by evidence in the record. Given that: (1) Idaho case law (*Robinson*) supports dissipating blood-alcohol levels as amounting to an exigent circumstances exception to the warrant requirement; (2) the officers had a reasonable concern for officer safety because of Myhre's intoxication, refusal to show his hands, and retreat back into his home; (3) the

officers had information which would lead a reasonable person to believe Myhre had committed the crime of failing to stop and/or give information after an accident resulting in damage to a vehicle, or other property legally upon or adjacent to a highway; (4) and the officers were justified in arresting Myhre for a serious offense, although not committed in their presence, pursuant to I.C. § 49-1405, the brief entry into Myhre's home and subsequent field-sobriety tests and arrest outside his home were reasonable.

At oral argument, Myhre's attorney indicated the facts in *Robinson* led to the inescapable finding that there was probable cause, and that those facts are missing in the present case. While there were eyewitnesses here who watched Robinson's erratic driving, and before the officer in *Robinson* crossed the threshold Robinson admitted driving her car from a bar, nothing in *Robinson* says the evidence in other cases is required to be that direct, that strong, or that compelling in order to support probable cause that a crime had been committed. The Idaho Court of Appeals in *Robinson* simply stated: "In other words, probable cause is necessary at the moment the officers enter a home." 144 Idaho 496, 499, 163 P.3d 1208, 1211. The hearing officer's finding in the present case that there was probable cause as to two crimes existed (A.R. p. 111-115) at the moment the officers crossed the threshold, is supported by substantial competent evidence in the record. While the hearing officer placed it in terms that the officers had legal cause to "contact" Myhre, rather than in terms of probable cause to cross the threshold, the hearing officer's conclusion is supported by the evidence.

#### **IV. CONCLUSION AND ORDER.**

For the reasons stated above, substantial evidence in the record exists which supports the findings of the hearing officer. Accordingly, this Court must deny the Petition for Review and affirm the license suspension.

IT IS HEREBY ORDERED based on substantial evidence in the record, Myhre's license suspension is AFFIRMED and Myhre's petition for review is DENIED.

IT IS FURTHER ORDERED the April 16, 2010, order staying Myhre's license suspension is RESCINDED.

Entered this 25<sup>th</sup> day of August, 2010.

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John T. Mitchell, District Judge

**Certificate of Service**

I certify that on the \_\_\_\_\_ day of August, 2010, a true copy of the foregoing was mailed postage prepaid or was sent by interoffice mail or facsimile to each of the following:

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Jeanne Clausen, Deputy Clerk