

**EVERYTHING
YOU
NEED
TO KNOW
ABOUT A
NEW YORK DWI
AND
YOUR DRIVER'S
LICENSE**

By Attorneys Mike Cyr & Larry Newman

**CYR & ASSOCIATES
401 E. State. St., Ste. 400
Ithaca, NY 14850**

Phone: (607) 229-5184

www.ithacadwi.com

EDUCATIONAL PURPOSES ONLY. COPYRIGHT CYR & ASSOCIATES 2015.

DISCLAIMER

This book is not intended as legal advice. Nor does it create an attorney-client relationship. It is simply written to educate people charged with a DWI or other "DW" offense in New York State.

It is the goal of this book to help those individuals facing license issues as a result of a DW charge and to point out important parts of the DW process. In our research, we found no other publication that thoroughly laid out the effects of a DW charge in New York on a person's ability to drive. Bear in mind, every case is different and has its own unique set of challenges. There is no "one way" to defend a DWI or DWAI drugs charge. The best advice we can give anyone facing DW charges of any kind is to consult with a local, licensed attorney who focuses on DWI defense and licensure. With any DW charge, it is important to understand BOTH the criminal case and the related license issues.

**Copyright Cyr & Associates 2015
Educational Purposes Only.**

Table of Contents

Chapter 1:	Why Is Your License Always Affected By a DW?	4
Chapter 2:	Six Phases of NYS Licensure After a DWI Arrest (Breath or Blood)	6
Chapter 3:	The NY DWI Refusal Case and License Actions	8
Chapter 4:	The 7 Factors That Must Be Considered with <u>ANY</u> New York State DWI Case	13
Chapter 5:	The Dangers and Pitfalls of the NYS Conditional Driver's License	16
Chapter 6:	Why Is It Important to Restore Full NYS Privileges AFTER Any DWI?	17
Chapter 7:	Do You <u>HAVE</u> to Take the New York DDP (Drinking Driver Program) to Get Your License Back?	18
Chapter 8:	License Penalties In Your Home State!	19
Chapter 9:	License Issues Moving from State-to-State with a DWI	23
Chapter 10:	I.I.D. and Getting Full Restoration of Your License Privileges	25
Chapter 11:	The Reasons for this Legal Quagmire to RE-Licensure	26
Chapter 12:	Getting RE-Licensed in NY with PRIOR License in ANY OTHER State/Jurisdiction BEFORE you got a New York DWI... (and a partridge in a pear tree!)	29
Chapter 13:	Felony DWI and Hardship License Privileges	32
Chapter 14:	Federal Influence on Your Driver's License Privileges	33
Chapter 15:	The BIG TEN Reasons for a NYS License Suspension	35
Chapter 16:	Object Lessons in Understanding Re-Licensure Problems	39
	DISCLAIMER	42
	ABOUT THE AUTHORS	43
	CONTACT INFO FOR CYR & ASSOCIATES	44

Chapter One

Why Is Your License Always Affected By a "DW"?

Any New York State "Driving While" case will inevitably, in some way, shape, or form AFFECT your privilege to drive. This may only result in a temporary loss of NYS privileges, but will eventually affect all privileges to drive in any state.

It is a direct consequence of the nature of the charge or charges you are facing. DWI is a special type of crime because it intersects two areas of the law. There is an administrative area (licensure) integrated with a criminal area (danger to the public). Even though this danger is usually characterized as merely potential harm, the public is the named victim in police reports with these types of crimes.

The World of Potential DWI License Issues:

1. Administrative Issues = License Issues

First, dealing with your license issues are as important as handling your criminal case. A license is a permission to do something, so it is afforded less weight legally. In other words, easy to get and easy to lose. The standard is even less than the civil standard to award money in a car accident (more likely than not).

2. Administrative (License) Issues Can Be Double

If you violate (DWI/DUI offend) in one state but are licensed in another you face "potential" penalties in both. Suspensions of privileges, revocations of privileges, fines, surcharges, classes, and evaluations are all potential penalties. Some are mandatory if you ever seek to be licensed anywhere.

3. States Often Communicate with One Another About Licensure

Some states will inform other states immediately, some not at all. Some will grant reciprocity (equal credit for penalties and/or classes) and some will not. Your DWI/DUI attorney should help you with easing some of these burdens if possible. Either way, it will eventually go to the National driver Registry (all states must check this Federal database before re-newing or issuing a driver's license). New Federal laws have placed burdens on the states to now police the identity and legality of their citizens and their licensure.

4. States May Do Nothing with Your License or A lot

Some states, like Pennsylvania, on first time out-of-state DUI/DWI do NOTHING. Some states like New Jersey, fine \$3000 and suspend with no conditional or restricted privileges (based on BAC) for up to 7 months (technically 210 days).

NOTE: There are Two Main DWI License Situations:

-You Tested (gave a sample of blood or breath)

or

-You Refused (or they marked it as a refusal)

IF You TESTED: You Took a Chemical Test of Your Blood or Breath

Chapter Two

SIX PHASES OF NYS LICENSURE AFTER A DWI (Breath or Blood) ARREST

In New York State, you will go through various phases of licensure after a DWI case begins. If you took a police chemical test by giving them a sample of your blood or breath there will be six distinct phases. These may be combined or condensed depending on your particular case.

PHASE ONE, there is an administrative Court suspension of FULL privileges to drive in NYS. Remember, NYS courts/judges only have power (jurisdiction) over NYS privileges. So if you have an out-of-state license it should be good in the other 49 states while things in NYS are pending.

This is called the "suspension pending prosecution." This occurs with a BAC of .08 or higher. Your attorney can apply for a hardship privilege license at this phase. This can allow partial driving privileges for work, school, and medical care.

Hardship is case by case and is not a given. Proof will be required to meet the legal standard of hardship for any privileges to be awarded by the judge.

PHASE TWO, you can apply at the local DMV for a PCCL (pre-conviction conditional license) after 30 days from the administrative court suspension. You may need a certified copy of your out-of-state license history/abstract to apply if you are from out-of-state.

PHASE THREE, if your criminal case is resolved then your attorney can request a stay (delay) of the license suspension. This is called a "twenty-day license" because it is only for 20 days from the sentencing date.

PHASE FOUR, suspension or revocation of license privileges begins, then the NYS DMV's DDP (drinking driver program), and the second type of conditional license (the PRCL: Post Revocation Conditional License). This is usually available at the local DMV (to sign up and receive) about 10 to 14 days after sentencing.

PHASE FIVE, after completion of the seven week DDP, for first time offenders, 21 YO or older, and no other issues (talk with an attorney). Re-apply (pay more \$) and receive back FULL privileges. One caveat, this is a FULL PROBATIONARY license for six months. One cell phone violation, seat belt violation, anything beyond a parking ticket and you are SOL.

PHASE SIX, restoration for full license privileges will be dependent upon whether your final plead to offense was a DWI or a DWAI. If it was a DWAI then payment of a DMV license restoration fee will be the final step in this onerous process. If your case involved the installation of a IID (ignition interlock device) on your car then the final step in the process will hinge upon removal of the device from your car.

Please Remember, ONE SIZE DOES NOT FIT ALL

So there you have it in all it's glory. Now if you refused a breath test, a different course, if you are under 21, a different course, if you are from out-of-state, a potentially different course. If you, if you, I think you get that it is NOT always one size fits all, and this is the general course of events on NYS DWI DMV stuff.

Chapter Three

THE NY DWI REFUSAL CASE AND LICENSE ACTIONS

***IF YOU REFUSED to Test (or police said you did): You Refused a Chemical Test of Your Blood or Breath**

The New York DWI refusal case has very specific and unique issues. First of all, **You may feel like YOU didn't really Refuse to take their chemical test.**

YOUR refusal may or may not have been explicit and clear, it may have been based on your conduct with the police as determined by the police, not by you. If they felt you were not fully cooperating, it is a refusal. If they felt you were playing games with them, it is marked as a refusal. If they viewed your blowing into their machine as without a true and honest effort, it is considered to be A REFUSAL!

We have had clients who were hysterically crying or hysterically laughing or were just not getting their airflow right marked as a refusal. You have to blow into the machine **low and slow**. You may not see your effort **that way**, but it may be seen that way by law enforcement. By the way, this is not up for debate. It may however be challenged at the hearing (in front of the judge), but arguing with the police over this is pointless at that point in time.

The Refusal: Confusion Over Your Driver's License or Privilege

You are brought in cuffs to your first court appearance, sometimes it is a midnight or 2:00am Court appearance. The judge decides then and there to take (suspend) your driver's license. At this point you may or may not have an attorney present. So you now have NO license, and NO privileges to drive. NYS license holders have NO privileges to drive anywhere at this point, but out-of-state license holders still have licensure in the other 49 states.

In Tompkins County they are trying to have assigned counsel (public defender) present at this first (early morning/late night) court hearing. But this public attorney may or may not fully explain what is really going on with a DWI refusal case. Your license to drive (or privilege if from you are from out-of-state) is FIRST being suspended, but then you MUST have a DMV refusal hearing to decide if your license will be REVOKED for one year. This is just based upon your refusal to take the police chemical test. This DMV license hearing has to

happen within 15 days. If it does NOT get scheduled within 15 days, you can go to the DMV after those 15 days, and get a new license until your DMV hearing.

As a side note, suspension is usually a temporary short-term license action with little effort to revive, and revocation (cancellation) is a longer-term license action that involves more effort and cost to revive. Undoing license revocations of over a year in duration may require a new written and/or road test.

ALL Tompkins County town or village or city Courts (Ithaca, Newfield, Lansing, Groton, Dryden, etc.) DWI refusal case hearings are scheduled at the Cortland County Courthouse on Fridays at 1:00pm, 1st floor, in the room next to the soda/juice machine. Everyone's hearing is set for that day and time so it could be really busy. You may be there for an hour or the afternoon depending on when your attorney arrives, when the police arrive, or if they have five cases ahead of yours.

DWI Refusal Cases typically have TWO separate license actions at the conclusion of the criminal case.

It is a bit more complicated at the end of a DWI refusal case because there are, in fact, TWO separate and distinct DMV actions against your driving privileges in NYS (your driver's license):

1. The Refusal (your refusing to test) itself creates the first license action: an administrative DMV license refusal hearing will be scheduled within 15 days of the initial appearance license suspension in criminal court. The consequences of this administrative hearing are usually a one-year license revocation.
2. The Criminal DWI Case will create a second license action. The consequences of a DWAI being a 90 day suspension, or if a DWI, then a six month revocation of license privileges, depends upon the final court charge.

These TWO separate, but related, DMV license actions can run consecutive or concurrent to one another. Even if your criminal case was dismissed (no license action), we will still have to deal with the second license action (from the refusal). If we have both license actions (criminal case and refusal case) they can run at the same time (concurrently) or they can potentially run one after the other (consecutively). It is better to have them run as concurrently as possible to avoid license penalties running beyond a one-year time frame.

Depending upon the final case (criminal or non-criminal) outcome (resolution) there could be only a 90 day suspension (DWAI) from the non-criminal charge or a six month revocation (DWI) criminal charge, but still have the underlying one-year revocation from the Refusal.

It is confusing. In any case, if you resolve a charge under VTL 1192 (DWI or DWAI) the only license privilege you may be eligible for is a **conditional license privilege** (if we have action based upon the Refusal). This would be for the remainder of the one-year time period regardless of the criminal case outcome.

The first problem when dealing with a New York DWI refusal case is if you miss the first DMV administrative license hearing.

If your attorney reschedules it OR the police don't show up, then it may take many, many months for Albany DMV to reschedule it. The good news is if the police don't show up, then you can get your driving privileges back temporarily. Be warned that if you or your attorney reschedule then the following issues arise:

- This is months without a license (it is suspended).
- This is months without getting credit (time served) towards a license suspension or revocation.
- This is months without getting an opportunity to challenge the evidence.
- This is months waiting for closure, and putting this behind you.

Hence the importance of being at the FIRST scheduled hearing, and your attorney's role in that process. In some cases this first DMV DWI refusal hearing date can be rescheduled (only the first) via the court/judge.

Does Your Attorney Give This DMV License Refusal Hearing Any Level of Importance?

If all of this wasn't confusing enough, your "public defender" or "assigned counsel" lawyer may or may not show to this hearing or view it as important.

Why do some attorneys NOT show up to these types of hearings or feel they are NOT important?

One reason is that assigned counsel attorneys are compensated for hearings in which life and liberty are on the line. Sometimes they are not compensated for hearings when the only thing in jeopardy are license privileges. This DMV refusal action is a license hearing, it is non-criminal, it is administrative, it involves your license, which is not a right but merely a privilege.

They are paid by the county to attend criminal court proceedings. The county does not pay attorneys to defend traffic tickets. A traffic ticket may threaten your driver's license, but no one is going to pay to defend that either. As a side note, we know of only one former city judge that would compensate assigned attorneys for their appearances with these administrative hearings.

The importance of the hearing goes beyond licensure.

My advice is always to hire an attorney early in the process, and make sure that your attorney defends you at this refusal hearing. DWI refusal cases mean that the state has only charged you with DWI common law. "Common law" means they must prove you guilty beyond a reasonable doubt by mere opinion evidence. Usually this is only police opinion. The administrative hearing is truly an opportunity to learn about your case; its strengths and its weaknesses. It is a chance to cross-examine the state's main (and often only) witness against you.

When may you want to WAIVE (give up) the administrative refusal hearing?

Waiving a DMV refusal hearing can occasionally have some strategic value to your case. For example, if a plea offer has been negotiated with the prosecutor, it may be wise to waive the DMV refusal hearing to get the license revocation started as soon as possible. The sooner it begins means the sooner it ends. However, in the majority of refusal cases, it is important to cross-examine the officer at the DMV refusal hearing to get a "sneak preview" of what a trial might look like.

How to get a conditional license after your DWI REFUSAL case?

You MUST have Plead Guilty or been found Guilty of any NYS DW under VTL 1192. This could be a plea of guilty to a DWI or DWAI.

The Ithaca DMV is located on 3rd street and is best to go on Tuesday through Thursday. It is really busy on Mondays and Fridays with lines out the door, but mid-week it is a ghost town.

TWO DISTINCT SITUATIONS:

I. You hold an Out-of-State Driver's License

If your DWI (misdemeanor) refusal case gets reduced to a DWAI (violation) and you have an **out-of-state license (NOT a NYS license)** you will have additional hoops to jump through than if you had a NYS license case.

Remember: because of your refusal to take a chemical test (of breath or blood) all you are going to have for one full year will be conditional driving privileges in New York State. In some instances of DWI, your home state DMV will do nothing to affect your driving privileges, but in others the penalties are very harsh. In some situations you will have full privileges in 49 states, and only partial privileges in NYS. In some others, you will have no driving privileges whatsoever (like if you are suspended in New Jersey).

IF you have a license from another state and you want to get any NYS privileges you need to: Get a certified copy of your driving history from your **home state DMV**.

You may want to look into this early in your DWI adventure. Some states only issue these from the capital or main DMV office and only by snail mail. It may take awhile to get a "certified" (signed, stamped, sealed) copy of your driving record. The NYS DMV wants a fairly recent abstract (can't be too old) to prove your home license is valid with no suspensions or restrictions. This step will be unnecessary if you have a NYS driver's license.

II. You hold a NYS Driver's License

You will not need a driving history unless you held driver's license privileges in any other states prior to your NYS license. Then to fully restore NYS privileges in the future you will need to provide certified abstracts (driving histories) from every state you held licensure prior to NYS.

Then you will need to pay the New York **D.R.A. (Driver Responsibility Assessment)** for that year.

Every NYS DW has a three year \$250/year assessment which must be paid before you can sign up for DDP (Drinking Driver Program), and get a conditional license. They want your money first and then you can move forward.

Then you will fill out a **special conditional license form**.

You can put down your school location, work location, and select a three hour discretionary driving time period one day of the week. No proof will be required but this part is kind of like an interview with the DMV officer. They ask you when you want to begin the DDP classes, and usually there are a few options of days, and dates.

Conditional includes WORK, SCHOOL, PLUS MEDICAL

Additionally you will have permission (privileges) to drive to all doctors i.e. medical providers for you and/or loved ones under your care. These can be driven to without writing down their names and addresses on this form. You should just keep proof with you of the appointments if stopped by the police. You would have to give the police a reason to stop you in the first place.

Chapter Four

The Seven License Factors That Must Be Considered with ANY New York State DWI Case

How your license or privilege to drive will be specifically impacted will depend on the type of DW case you begin with. Often the type of charges will drive the criminal case, and the license case simultaneously, but in different ways. Charges can range from low levels of alcohol in a DWAI alcohol charge to high levels of alcohol in an Aggravated alcohol DWI. They can range from involving drugs other than alcohol (in DWAI drugs cases) or even a DWI refusal which may or may not involve drugs and/or alcohol at all.

Factor 1: YOUR AGE

How old are YOU at the time of the offense? Was your age over or under 21 at the time of your DWI? Was it over or under 19 at the time of your DWI?

Suspensions and revocations are longer for those under 21 years of age at the time of the offense. People under 21 are suspended for at least a year on a first time offense. Generally people 21 or older, with a 1st time DWI will get their privileges back after completing the DMV DDP (Drinking Driver Program). People age 18 or less at the time of their DWI will usually be classified as *Youthful Offender status*. "Y.O." or Youthful Offender has many benefits because it permits adjudication (a type of expungement) of the criminal charges.

Factor 2: YOUR LICENSE STATE

Where are your license or driving privileges from (which state or country?)

People from another state (than NY) will likely have to deal with both NYS and their home state to CLEAR their complete license privileges. People from a foreign country without a United States license have additional issues to consider with a DWI case. The question is: will they ever be able to get a license in the United States at some future date and place?

Would it be wise at the onset of your matter to maybe change your license over to NYS before the Court case begins? *NOTE: This is case/situation specific, and must be discussed with a well-versed DWI attorney.*

Factor 3: YOUR PRIOR LICENSE HISTORY

What is your prior license history (prior points/charges/offenses/accidents)?

Those with two DWs within the past five years face higher penalties and the inability to get conditional privileges or licensure. Those with two or more DWs within 10 years face having to complete an OASAS drug/alcohol program prior to re-licensure. Those bad (driving) histories with many points or negative safety units or accidents or driving-related charges may have additional hurdles or concerns. Those with extensive histories may face an even longer revocation period or even a potential lifetime loss of driving privileges. [*NOTE: It is common for the DMV to give a significant revocation or even lifetime driving ban to offenders with 3 or more DW's on their history.]

Factor 4: YOUR PRIOR OFFENSE TIMING

What was the timing of your prior offenses (within 5 years or 10 years or 25 years)?

When and where prior offenses occurred could mean the difference between getting back a license or never getting back a license. Timing of prior offenses could also impact your plea negotiations with the District Attorney and Judge. Out-of-state convictions CAN BE USED AGAINST YOU IN NEW YORK. Prior DUI (driving under the influence) or OUI (operating under the influence) charges from another jurisdiction may be used to enhance your current NYS charges to a higher level felony charge.

Factor 5: IS YOUR DWI CASE BASED UPON A CHEMICAL TEST OF BLOOD OR BREATH (OR NOTHING) ?

Was your DWI a blood case versus breath case versus refusal of a chemical test?

If your case is a blood case, then add months to discovering when your license will be suspended. Potentially, the timing of a blood case can delay the criminal case and future charges. Forensic testing of blood in NYS can take anywhere between 4 to 6 weeks. If the blood comes back 0.18% BAC (blood alcohol content) or more then it is an Aggravated DWI, and not a regular 0.08% BAC DWI. The *general state police policy* is to not check for drugs other than alcohol if they have at least a 0.08% BAC level of alcohol.

If the case is a chemical refusal case then there will be no driving privileges for one year if the administrative DMV refusal case is lost. These are major issues to discuss with your attorney because even if you get the criminal charges dismissed, you will be without driving privileges for a YEAR. In New York State, the DMV conditions a conviction (or plea of guilt) to one of the VTL 1192 charges

(DWAI or DWI) to enable participation in the DMV DDP (Drinking Driver Program) course, and to get a conditional driver's license. In other words, if it is a refusal case, and the underlying criminal charges are dismissed, you will NOT be eligible for a conditional license during the one-year revocation period.

Factor 6: DID YOUR DWI INVOLVE A CRASH?

Remember any driving-related offense in NYS that causes a license suspension or revocation has NO points associated with it. Those with DWI or DWAI charges do not receive points, BUT they do receive "negative safety units." Accidents also increase negative safety units on your DMV record. The DMV may use the sum total of your lifetime of points and/or negative safety units to determine licensure. As a general rule, Judges don't like to award or grant any type of licensure or privileges (hardship, conditional, or restricted) to those who have DWIs or driving-related offenses involving an accident.

Factor 7: WHAT TYPE OF ACCIDENT WAS INVOLVED WITH YOUR DWI?

In many cases, a "single" car accident involving a ditch, or a tree, or a traffic sign are a different animal than ones involving another car. If the DWI involved people, then the chances of re-licensure are greatly diminished.

Chapter Five

The Dangers and Pitfalls of a NYS Conditional Driver's License

Anytime someone gets a conditional license it means that they have had or are dealing with a New York DWI. Conditional licenses are only granted by the DMV for those who have DWI or DWAI (alcohol) charges.

Conditional licenses always come with *CONDITIONS*. They can only be used for specific purposes, at specific times, and for specific things. Conditional licenses are better than having NO license or driving privileges at all BUT,

- If you are looking for a job that requires driving, employers may NOT want you encumbered by driving based restrictions or limitations.
- If they are going to issue you a company car or use of a company vehicle of any type (including a golf cart) it is unlikely that their insurance will cover a driver who has only a conditional license.
- Most car rental agencies will not rent a car to someone holding a conditional license.

[the New York conditional license says, " CONDITIONAL LICENSE" right on it. So you can't hide it.]

- If you plan on relocating to another state for work, the conditional license may or may not give you any privileges to drive in that jurisdiction. For one example, New York state conditionals issued after NYS DWI refusals are not recognized in Pennsylvania. Because a PA driver who refused would have NO privileges under that scenario, out-of-state drivers do not either.
- If you plan on changing: your state of residence for school or an internship, your license, your car insurance, and your car registration, then most states will not allow a semi-privileged (conditional) license holder full privileges in their state.

Chapter Six

Why Is It Important to RESTORE FULL NYS PRIVILEGES after any DWI?

Regardless of whether you begin your DWI case with a New York license or one from another state you must keep in mind the importance of fully restoring that privilege at a later date. Any action against your license by the NYS DMV will be reported to the NDR (National Driver Registry). Any action pending against your license or privilege in New York State will block you from a number of things:

- You cannot renew the license when it comes time for renewal.
- You cannot change (exchange) the license with another state.
- You cannot get a fully unrestricted (unencumbered) license for car rental.
- You may have to pay higher car insurance premiums.
- You may not be given a job that requires a full driver's license.

You must get to the position where NYS DMV has NO recorded pending ACTION upon your privilege to DRIVE. This is true regardless of your original state of licensure.

Chapter Seven

Do You Have To Take the New York DDP (Drinking Driver Program) to get Your License Back?

Many lawyers, many of them professing New York DWI expertise/criminal defense expertise, say "oh yeah DDP is a must, a mandatory to get a NYS driver's license back after a DWI."

The Truth comes from the mouth of the New York State DMV booklet, a mere public booklet that explains to the general lay public about the program. Reading some basic brochures can be enlightening.

There is no DDP requirement.

The DDP is voluntary unless ordered by the judge upon sentencing. It is not necessary for re-licensure. It is only a necessity for those who want a conditional license during their suspension or revocation period.

From the DDP brochure from NYS DMV:

However, you may be eligible for a conditional license or a conditional driving privilege if you participate in New York State's Drinking Driver Program (DDP) or an approved out-of-state program.

If you are eligible "to participate" in the Drinking Driver Program, even if you "choose not" to participate, you will not be eligible again for the program or a conditional license for the next five years. In some instances, the court may order you to participate even if you already attended the DDP within the previous five years. However, you will not be eligible for a conditional license in this instance.

Chapter Eight

LICENSE PENALTIES IN YOUR HOME STATE!

It is legal to be given administrative penalties in two states. It does not violate double jeopardy, because you are NOT being tried for the same crime twice. Remember: a license is a privilege and not a constitutional right.

In almost every New York DWI case where the driver has an out-of-state license, there will be consequences and hoops to jump through to clear license issues in both jurisdictions. Our job is to see if we can get some reciprocity, eliminate redundancy, and ensure that punishments to licensure are minimized. Even though these people do not have a NYS driver's license, they hold (or held) New York privileges while driving in NY, and will now face NY DMV sanctions.

It has become usual and customary to be punished administratively in two states.

New Jersey License Holders with a New York DWI

New York and New Jersey are kindred states in many respects. Those with a New Jersey driver's license facing a NYS DWI will have to deal with **both** the NJ DMV and the NYS DMV.

The reciprocity of suspensions and of programs between the states is important to know about.

New Jersey DMV: Three Main Things (surcharge, suspension, and program)

1. NJ will assess a 3 year, \$1000/year insurance surcharge on your NYS DWI,

(and NYS DMV will assess an additional \$250/yr for three years; for a grand total of: **\$3,750** over three years in DMV surcharges alone!)

From NJ website brochure on surcharge:

All Alcohol and drug-related offenses

These surcharges are billed each year for three years:

- In-state operating under the influence of liquor or drugs (DUI)
- Out-of-state DUI (i.e. NYS DWI)
- Refusal to submit to chemical test (i.e. NYS refusal)

The surcharge for operating under the influence or refusal, whether it occurs in

New Jersey or another state, is \$1,000 a year for three years for both a first and a second violation.

2. NJ will also suspend driving privileges depending upon the driver's BAC level "at time of arrest."

BAC (blood alcohol concentration) less than 0.10%, = 90 day NJ suspension
BAC (blood alcohol concentration) more than 0.10%, =7 month (210 day) NJ suspension

NOTE: NJ offers NO conditional (occupational/work) license privileges. It is a HARD (FULL) loss of license privileges with NO exceptions. You cannot drive at all during the suspension (in NJ or any state).

See the New Jersey Department of Motor Vehicles Website to confirm all of this.

3. You will need to do the NJ Drinking Driver Program or the NYS DMV DDP

-Basic NJ first time program is two (6 hour days) in an Intoxicated Driver Resource Center = 12 hours total

-Compare to NYS DDP is 7 weeks (1.5 hours/night) = 15 hours total (Most NYS Courts, the DMV, and DDP mandates an alcohol/drug abuse evaluation/assessment)

From their website:
NJ Intoxicated driver program

Any person convicted of an alcohol related traffic offense must participate in a program at an Intoxicated Driving Resource Center (IDRC):

New Jersey has an IDRC in each county for first and third-time offenders and three regional centers for second-time offenders

During the program, offenders attend mandatory Alcohol and Highway Safety Education courses. The IDRC also evaluates each offender for an alcohol or drug problem and determines the need for treatment. If treatment is needed, the center refers the offender to an appropriate provider for a 16-week minimum treatment program.

Any DWI offender may supplement the treatment with attendance at a self-help group. IDRC monitors compliance and reports noncompliance to the courts and MVC. Satisfactory participation in IDRC is a step toward restoring your license. Failure to comply will result in further license suspension and possible jail time.

Pennsylvania License Consequences

Few states do not have penalties for out-of-state of DWI/DUI/OUI/OWI (the number of different acronyms is staggering). We can only name one state currently that has NO out-of-state administrative penalties, drumroll please... Pennsylvania. If you are convicted of a DWI in NYS, then there will be no consequences on your license in PA. Good news for you PA drivers.

Massachusetts License Consequences

Mass RMV will accept notice of NYS DWI conviction through National Driver Registry and reciprocate on that notice as if the offense occurred in MA. Initially, a one (1) year loss of license is the reciprocal penalty, however, if you complete a program in NY that satisfies MA version of "first offender alcohol program" they will reduce reciprocal suspension to 45 days, deemed served, once NYS reinstates your driving privilege in NY. The NY "Drinking Driver Program" **may satisfy** the MA "first offender alcohol program" requirement, but MA also has discretion to NOT accept it. However, be warned that there is no hardship license in MA if your driving privilege remains suspended out of state.

If Mass finds out about your DWI conviction, they will suspend your MA license for one year, assuming it is a first offense. The suspension can be reduced to 45 days if the client enrolls in a 16 week, 1 hr per week program in MA. If you can show enrollment in the program and provide a letter from your employer indicating that you need your license for work (or public transportation is not available), you can get a hardship license for the entire 45 day suspension. If the one-year suspension holds up, you can only be eligible for a hardship license after 3 months of revocation in MA. The problem lies with the NY suspension. If you are suspended in NY, then MA will not give you ANY DRIVING PRIVILEGE at all until the out-of-state suspension is over.

Even if the suspension is not reported to the MA RMV, if the client comes up for renewal in MA they will do a National Driver Registry check and find out about it that way. This will cause the suspension and penalties to trigger in MA. Be forewarned that in addition to the suspension, there will be RMV costs and penalties as well.

Here is the link info to the MA Hardship License Application:

http://www.massrmv.com/rmv/suspend/downloads/OUI_Criteria.pdf

More general info on MA OUI convictions:

<http://www.massrmv.com/rmv/suspend/oui.htm>

THE KEY Takeaway:

Whatever state you come from or go to (with a DWI/DUI) you will have to deal with the DMV in both jurisdictions (understand the rules/laws) **to completely restore and clean your driving record/history.**

Chapter Nine

License Issues

Moving from State-to-State with a DWI

Playing the “WHAT IF” GAME

Today we will play the “what if” game. What if we have a pending DWI charge or charges? Can we move? Can we relocate? Can we take a new job? Can we enter a new graduate program? Hell, can we even sign a new lease for an apartment?

Or are all of these BAD ideas while our case is pending?

NYS Misdemeanor DWI Probation Keeps You in NYS

First, if you get placed on misdemeanor NYS probation YOU are STUCK in New York for 2 or 3 years. NYS misdemeanor probation does not transfer state-to-state. It is community-based and centered local supervision. You could transfer to one of the other counties (NYS has 62), but not out-of-state. That is one of the real dangers of NYS DWI misdemeanors, they could lock you down to staying in New York State. If you decide to move anyway, you will be charged with additional crimes, and warrants will be issued for your arrest.

Is Your NY Conditional License Any Good Anyplace Else?

Second, if you move after a NYS refusal DWI or a DWI with a chemical (blood or breath) test, but only have a conditional driver's license, will this license be honored (accepted) in the new state?

For example, I had a NYS refusal who wanted to take a job in PA, but PA DMV said that he would have NO license privileges if the refusal occurred in PA, so they would NOT honor the NYS conditional privileges. If he got stopped (pulled over) for anything in PA, then he was in trouble with that license. Ignorance would not be a defense to unlicensed operation in that situation. Every state is different, some offer no conditional privileges to their DUI offenders, so they offer NYS offenders NO privileges either. In NJ, there is NO conditional or hardship license. So using a NYS conditional in NJ would be a big problem.

Ignition Interlock Requirement Travels With You State-to-State

Third, under the new Leandra's Law, there is an ignition interlock requirement of 12 months for all first time DWI offenders. If it is installed in NYS, and then you move, the law still requires monitoring and downloading the information from the device every 30 days. Will your provider, Intoxalock or Smartstart, allow you to transfer the monitoring to a new state (location)? You must insure that the information gets sent via computer to the monitor back in the county of the DWI offense every month. What if they log a violation or a violation of the device? You must now return to the monitoring county and face the court of record.

Chapter Ten

IID and Getting Full Restoration of Your License Privileges

DMV DWI "A4" License Restriction= NO driving without an IID

Effective November 1, 2013 all court-ordered ignition interlocks for DWI cases will now be classified as a license restriction **A4 by the DMV**. This is regardless of whether the case is resolved with a CD (conditional discharge) or a term of Probation monitoring and supervision (two or three year term).

Getting Fully Re-licensed Requires Removing the A4 Restriction

This will require one of two things for removal. This is not removal of the IID from the car, this is about removal of the requirement from the physical driver's license and DMV record. You see, every license with this A4 requirement will be marked on the back of the license with an "A4" for law enforcement. For the DMV to remove the A4 restriction, you will need a Court document indicating removal of the IID or a probation release of license document.

NOTE: This document will need to be brought to the DMV to get FULLY re-licensed.

Court Ordered Ignition Interlocks by the Numbers

- Court ordered for 12 months on every DWI
- Minimum time period of 6 months of placement with NO violations noted
- Some counties only note violations above .02 BAC
- One time .05 BAC or more is an automatic violation
- Court can be petitioned after 6 months for early release of IID
- Monitored by the County of Arrest (Conditional Discharge) or County of Probation (Probation)
- Violations can result in a VTL 1198 (9)(d), a misdemeanor called "Circumvention of the use of the interlock device" punishable by up to a year in jail and/or probation and/or fines and/or increased time with the IID installed
- Violations can also result in Violation of your original Conditional Discharge
- Violations can result in resentencing on plead to offense (jail and/or probation)
- Violations can also result in Violation of Probation (typically 6 months of jail)
- Ignition Interlock will be displayed on YOUR DMV record (and back of your driver's license)
- A4 will appear on front of your driver's license as R:A4 (restriction A4)

Chapter Eleven

The Reasons for This Legal Quagmire to RE-Licensure

1. Electronic transfers of information sometimes get one key stroke too many or too few or just wrong.
2. There is so much going on with a DWI case or multiple traffic violations that things get missed.
3. New court staff or older and tired court staff can be overwhelmed with paperwork.
4. New changes to the New York law make re-licensure a "real privilege" and is no longer taken lightly.

So, First what do you do to GET RE-LICENSED IN NYS?

1. DRIVING RECORDS (SHORT-TIME OR LIFETIME) It's as easy as 1,2, and 3...

Get your driving record or history or abstract from your home state, and New York State. Give yourself plenty of time with out-of-state records as they are going to need to be certified, sealed, stamped, verified from the main capital, main DMV of your home jurisdiction. If you have held licenses in more than one state over your lifetime be prepared to get a history from each and every state you have held a license in.

For a 4 year record, local DMVs can provide a history. For lifetime histories you need to make a formal request from Albany DMV.

How do YOU get a "lifetime" driving record ?

You can only get a "lifetime" driving record abstract from the ALBANY DMV FOIL Office.

Only you, or someone you have given written permission to, may order this type of driving abstract. You may use the General Consent for Release of Personal Information (MV-15GC) to establish that such permission has been given.

To request your "lifetime" driving record from FOIL:

YOU must complete and mail the Freedom of Information Law Request Form (MV-15F)

Or

Write a letter requesting your "lifetime" driving record abstract.

Be sure to include your mailing address so the FOIL Office can respond by mail, a photocopy of your driver license or other government issued photo ID card with your request (you may black out the picture), credit card information or a personal check or money order for \$10.00 payable to the Commissioner of Motor Vehicles.

Send your request, form or letter, to the FOIL Office

Records Access Officer
New York State Department of Motor Vehicles
FOIL Office
6 Empire State Plaza, Room 222
Albany, NY 12228

The FOIL Office will respond to your FOIL request within 5 days of receiving the request. They will either provide you with the records you requested or they will tell you they received your request and provide a time frame for when you can expect to receive the record you requested (usually within 20 business days)

The FOIL Office will not release the record you have requested until payment has been received in full.

Yes, this used to be a lengthy process but the DMV has created a new sub-division (office) within the Albany office. What used to take months they say will now be done in a matter of days. Really? We will wait and see how this plays out.

THE NEW NYS DMV CERTIFIED DOCUMENT CENTER

The NEW office is called the DMV Certified Document Center. It was set up to specifically handle and focus on requests for lifetime driving records, and the DMV "expects" the turnaround time for requests to be only one to two days. I guess we will believe it when we see it, just call us skeptical, but with the waits we usually witness, that would be a miracle.

Who needs a lifetime history?

Anyone with multiple DWIs, DWAI, DUIs, OUIs, from New York or any other state that is seeking re-licensure or just licensure in New York State should first begin with a lifetime history.

2. Call the DMV:

Issues with re-licensure, questions about your re-licensure, and what you need to do, and when you can do it? Be prepared to be on hold, upwards of an hour. Be prepared to be transferred to nowhere and no one multiple times, and be prepared to be frustrated and mad. Seriously, it can be a PITA, but once you get through they are helpful.

DMV Driver Improvement Unit: DWI re-licensure, and others post-suspension/revocation

DMV says they only have 19 operators so be patient, this is an understatement, be very patient.

Monday to Friday ONLY 8:30 AM to 12:30 PM
(518) 474-0774

DMV Other Traffic Violations (tickets), and Misdemeanor (criminal) Charges: (every place in NYS EXCEPT Buffalo, Rochester, NYC, and Staten Island)

Call TSLED (Traffic Safety Law Enforcement Division)

Monday to Friday ONLY 8:00 AM to 4:00 PM
(518) 474-3255

3. AFTER Review of DMV Records, and Discussion with DMV: Fix ANY outstanding problems/issues/tickets

You may have fines to pay. You may have assessments to pay (another word for fines) but it sounds better. You may have tickets/charges/violations to resolve in state or out-of-state.

NOTE: Until you are Completely CLEAR in every state in the union (all 50) you will not be able to be re-licensed in New York State.

Recently the DRA (Driver Responsibility Assessment) on points went up to \$75.00 for every point accumulated over 6 within 18 months.

So the first 6 points is a \$300 DRA but every point thereafter is another \$75.00. (it used to be \$50.00). The DMV bumped up the fee, excuse me, "assessment" by 50%, yikes! Talk about inflation in action.

Chapter Twelve

Getting RE-licensed in NY with PRIOR License in Any Other State/Jurisdiction BEFORE you got a New York State License, and you got a NYS DWI ...(and a partridge in a pear tree!)

For starters, what? Let us say this is not a published or known NYS DMV policy. The DMV rules are changing all the time. This is something that is being done as of NOW! Nobody sent us a memo, and no one has even discussed this issue at a New York DWI/DUI seminar or conference.

THIS IS THE PROBLEM:

You can't prepare DWI clients for lengthy license issues without prior knowledge of the rules (policies).

In the Before Time (before July 11, 2014)

The New York State DMV used to give back a driving privilege early after completion of their DDP (drinking driver program). In other words, they would trump the Court's suspension/revocation time period. Remember, license suspensions of 90 days are for VTL 1192 (1) DWAI (driving while ability impaired), and license revocations of 6 months or 12 months were for VTL 1192 (2) DWI .08 or more; and VTL 1192 (2) (a) (a) Aggravated DWI .18 or higher.

This was published in their DMV books/manuals, and was their policy. For a 1st time DWI or DWAI or ADWI in New York, no complications (major accident/injury), and you then do the DDP, bingo you got your full driving privileges back! Easy- Peasy...

In the After Time (Post July 10, 2014)

Now the New York State DMV will require **those that have been licensed in any other state/jurisdiction before New York State licensure** to get a certified/sealed/stamped driving history from all these places and send them to DMV headquarters in Albany, NY to get re-licensed. Yes, this will take time. Yes, it is a major pain in the you-know-what.

How do we know this?

A recent DWI client went to apply for re-licensure. Completed the DDP and went into the DMV with his letter. They stopped him, asked him about a prior license in Maryland, from 5 years ago.

Now you have to get a certified/sealed/stamped driving history from MD, and then send this to Albany with this form called:

**NEW YORK STATE DEPARTMENT OF MOTOR VEHICLES
DRIVER HISTORY DISCLOSURE (form MV-47)**

1. Have you ever applied for or been issued a driver license in New York State or elsewhere in any other name?

2. Please list all places in which you have been issued a driver license. Include all U.S. states (including NY), territories and possessions; District of Columbia; and Canadian provinces or territories.

3. Have you had any alcohol/drugged driving convictions in your lifetime?

a. if yes, indicate how many in:

New York _____

Other than New York _____

b. Indicate the non-New York state (s) or other location (s) and the year in which those alcohol/drugged driving conviction (s) occurred.

STATE (or other location) _____ YEAR _____

STATE (or other location) _____ YEAR _____

STATE (or other location) _____ YEAR _____

CERTIFICATION: I certify that the information I have given on this form is true. i understand that the NYS DMV may contact the jurisdictions indicated to validate the information provided.

IMPORTANT: Making a false statement on this disclosure; or in any proof or statement in connection with it, or deceiving or substituting, or causing another person to deceive or substitute in connection with this disclosure, may subject you to criminal prosecution for a misdemeanor or felony under the Vehicle & Traffic Law and/or Penal Law.

Signature: _____ Date: _____

MV-47 (3/13)

Our best guess is that the form New York State DMV MV-47 was developed (created) in March of 2013. We had not heard about it until recently. What is scary is: what other things may be sprung upon us? Going through the getting of records state to state is hard enough, waiting for months (if you are lucky) for the Albany DMV to act or respond is another Herculean challenge.

Chapter Thirteen

Felony DWI and Hardship License Privileges

On a first time New York DWI with a blood or breath test that reveals .08 BAC or more, the Court must suspend your privilege to drive pending the prosecution of your case. You can apply for hardship license privileges with these first time offenses.

Things get a bit trickier with a 2nd DWI. Remember a 2nd DWI in 10 years within the state of New York will be enhanced to the Felony Level. It is a class E Felony, punishable by up to 1 1/3 to 4 years in prison, 5 years of probation, etc.

Can You get a Hardship with a Felony DWI Pending in New York State?

Fast answer, it depends.

There are Three Instances Where You Will **Not** Get any License Privileges :

1. If it is a 2nd DWI within 5 years, then NO hardship and NO conditional license privileges.
2. If any of the Penal crimes under sections 120 and 125 are also charged. [These are usually where there are damages to people.]
3. If the Judge is not knowledgeable (just doesn't know the law).

Chapter Fourteen

Federal Influence on your Driver's License Privileges

Life, like law, has a great many layers. Changing your perspectives, angle, or viewpoint of the same situation may depress or elate you. Laws, rules, and statutes come in different varieties and levels. We have Federal laws, State laws, and local (municipal) laws. In fact, you may be brought up on charges across the board (all three) in some cases. Sometimes violations are segmented (isolated to one area), sometimes they may spill over into multiple jurisdictions.

The Feds and Federal Law

The old expression, "are you making a Federal case out of it?" refers to the complex, harsh, and conservative Federal (government) regulations. Bringing a claim in Federal Court or being brought to a Federal Court (IRS, FBI, NSA) on criminal charges is not fun. Federal cases and potential Federal influence must always be considered with any state criminal or even non-criminal charge.

Federal Influence on New York State Traffic (i.e. speeding) Violations

National Driver Registry (the NDR) and Federal law, 23 CFR 1327.5(b)(1)

They (any state) will eventually find out about any outstanding traffic offenses in any other state, upon either your application for a driver's license or your renewal of a driver's license.

What is the NDR?

The National Driver Register (NDR) is a computerized database of information about drivers who have had their licenses revoked or suspended, or who have been convicted of serious traffic violations such as driving while impaired by alcohol or drugs. State motor vehicle agencies provide NDR with the names of individuals who have lost their privilege or who have been convicted of a serious traffic violation. When a person applies for a driver's license the state checks to see if the name is on the NDR file. If a person has been reported to the NDR as a problem driver, the license may be denied.

Remember, any untaken care of traffic violations will default to a license (privilege) suspension in New York State. This is not a maybe, it is a fact. License = a privilege to drive in that state (whether you have a license there or someplace else).

How it (NDR) works:

When a person renews or applies for a driver's license in any state the MVA (Motor Vehicle Association) must check to see if the name is on the NDR Problem Driver Pointer System (PDPS) (as required by federal law--see 23 CFR 1327.5(b)(1))

All Motor Vehicle Associations must check you under Federal Law 23 CFR 1327.5(b)(1).

<http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c...>

*The state that gave you any license "privileges" only has jurisdiction/authority over your "privileges" in that state, but if you drive in any other state during that time (of driving), you have an assumed driving privilege in that state.

KEY TAKEAWAY:

Violations, even non-criminal offenses, can have a long and deep Federal impact upon your life: whether that is your ability to complete your education, your ability to drive a car, and/or your ability to get a job.

In New York State, a driver's license (or privilege) can be suspended for many different reasons. Remember NYS can ONLY suspend privileges of Out-of-State holders, they can't suspend your home state license, only your home state can do that.

Chapter Fifteen

The BIG TEN reasons for a NYS License Suspension:

- Unpaid child support can get your driver's license suspended;
- Unpaid tickets, Court fines, and/or DMV surcharges can get your driver's license suspended;
- Three speeding tickets within 18 months can get your driver's license suspended;
- 11 points from various traffic violations within 18 months can get your driver's license suspended;
- Driving without insurance can get your license revoked for a year;
- Physical (medically related) illness and/or psychological illness can get your license suspended;
- Using a false driver's license (altered or unlawful use) to obtain alcohol (under 21) can get your license suspended;
- Leaving the scene of an accident with injuries can get your license suspended;
- Being charged with a DWI can get your license suspended;
- Refusing to take a police-requested blood and/or breath test can get your license suspended.

NOTE: License Suspension and License Revocation are different. Suspensions are generally shorter, easier to terminate, and the underlying privileges to drive still exist. Revocation means cancellation of privileges. It may require classes, high fines, longer time periods, re-testing (written and/or road and/or medical), completion of rehabilitation and/or treatment for the license to be reinstated (reissued).

What should you do after you get suspended?

Get a copy of your NYS DMV abstract, currently \$10.00. Even out-of state license holders can get a copy of their NYS record (to see any action pending) based upon an address and DOB (date of birth). These out-of-state license holders may have even been assigned a nine-digit NYS driver ID because of previous infractions (violations).

A second way to discover what is amiss is to contact the NYS DMV Driver Improvement Unit in Albany, NY. Local DMV records generally go back 10 years, but Albany has your **lifetime** driving history. You may have issues that go back 15 or 20 years that require correction.

Driving is not a luxury for some people, it is a necessity. It is even possible to get some type of license (privilege) while you are in a state of suspension or revocation.

Now that you know why your privileges were suspended or revoked, you have to ask three questions:

First question, are you even "eligible" for a special license (restricted or conditional)?

If the suspension is for monies due, then NO, they must be paid first.

NOTE: Some courts will not even let you pay the suspension lift fee (currently \$70.00) UNTIL all the underlying tickets (citations/violations) are completely resolved (disposed of).

If the suspension is for speeding tickets and/or too many points, then YES.
If the suspension is for a DWI, then YES if you have not had a prior DWI within 5 years.

Second question, is the suspension from POINTS and/or SPEEDS or a DWAI drug conviction?

You can apply for and receive a RESTRICTED license at the NYS DMV. It is a pretty simple form. The restricted license is to drive ONLY for work, school, and medical care during the time of your suspension. Suspension periods will vary, from a low of 31 days to a high of one year, depending upon the underlying reason for it.

Third question, is the suspension for a DWI alcohol or a DWAI alcohol?

The main word here is ALCOHOL, then you are probably eligible for a CONDITIONAL driver's license. The conditional driver's license is ONLY for alcohol-related offenses. It also gives the holder the ability to drive for treatment, rehabilitation, education, and counseling (all relating to their sobriety), and for work purposes (scope/course of employment), medical, and education.

The good news is that the DMV does not require PROOF of the job, school, and/or medical locations. The bad news is if you lie on their form (and attest by signing to it's truthfulness) you are guilty of a crime. Not a good idea to lie on any DMV applications to obtain privileges you are not legally (administratively) entitled to.

*There's our best explanation of the two main types of special licenses in NYS. There is another new type of restricted license for those with multiple DWIs, a long term history of violations, multiple accidents, and many points, BUT that is a story for a different day. That type of restricted license would come with an Ignition Interlock device requirement for a great many years.

Why Do You Have an INDEFINITE period of License Revocation?

We have seen privileges to drive withheld "indefinitely" after DWIs, reckless driving charges, vehicular assaults, after our client was found guilty of both DWIs after a trial, and after medical suspensions. The reasons to deny a license or reinstate one are endless. Usually it is based upon a combination of factors, a set of circumstances, and/or a history.

Of the situations of indefinite periods of license revocation that occur we usually encounter one of two things:

Negative Units or History of Alcohol/Substance Abuse.

Note: We are not getting into the multiple DWI reason for withholding a license as that is usually a given (easily explainable, understandable, and defined in law).

What are Negative Units?

The NYS DMV has a special system in place that is largely unknown by most attorneys and lay people. Under 15 NYCRR § 136.6, DWs, some traffic offenses, and accidents are not assigned the traditional "points" against your license instead they are **assigned just "negative units" by the DMV**. Any offense that results in a suspension or revocation of privileges will likely have negative units and NOT points.

Easy Formula: More Units = Less Safety = No License

15 NYCRR § 136.6 is a "safety factor" section of NYS law that specifically assigns "negative units" to different offenses/accidents/DWs. This is part of the record that the DMV Commissioner looks at if they are considering giving you back your license to drive. Things like reckless and speeding get assigned points and negative units. So a double whammy of trouble. Everything "bad" driving/behavior related can cause an uptick on your safety factors. In this instance, more is not good, but bad with a capital B.

The Surprise

People are often confused after completing all the NYS programs that they are denied reinstatement of their license/privilege. It is likely that you have too many negative units (more than 25 pursuant to Under 15 NYCRR § 136.4(a)(3)).

If you are revoked for a DWI, for example, maybe 2 DWs in the same event, and you have other driving offenses when the revocation period ends, then you apply for your license back. The DMV doesn't give you back your license because you have too many negative units. The six month/one year revocation or the ability to get your license back after taking the DDP never happens.

Do You Have a Drug/Alcohol History?

The second major reason not to reinstate privileges is if they classify you as a person with a history of Alcohol/Substance Abuse. The NY DMV also states that any driving record (abstract) with 2 or more "alcohol" related charges (could be a DWAI or DWI) within 10 years and boom, you now have a history of alcohol abuse. This is further defined in Part 136.1 (b) (3) of the Regulation of the Commissioner of Motor Vehicles.

Getting it (Your License/Privilege) Back After Being Classified

So to get your driver's license back after having 2 incidents within this 10 year time frame you MUST fill out and file DMV form DS-449, and submit evidence of either rehab (following an OASAS evaluation and follow up recommendations) OR a clean bill of health (i.e. after a drug / alcohol eval =no further treatment is necessary). Form DS- 449 is called "Alcohol Abuse Rehab. Program Summary."

Chapter Sixteen

Object Lessons in Understanding Re-Licensure Problems

Last night we got a phone call from a DWI client. His case was over, but his license or re-license nightmare was still continuing. Post-sentencing in any DWI case people have a list of things to do (called conditions). Some things just don't make sense and people can be confused. This occurs more frequently with out-of-state license holders. Just another level of complexity to conquer. Try as we might to make things easier, or work out, they don't always do. It's simple but not easy.

Problem ONE: A Communication Breakdown

Apparently, the communication between the Court and the New York DMV had issues (delays) and because of that his DMV license paperwork was delayed. Even though we had contacted the Court three times post sentencing to remedy this problem. The clerk did the right computer inputs but the DMV was dragging it's feet. We tried to discover or uncover what was going on. The good news is that this is not a common occurrence, but when it does happen it is not pleasant experience.

This is one of Murphy's laws, we work and we prepare and still it doesn't all come out perfect. It was just taking more time than it "should." Normal timeline is 2 weeks from the Court to the DMV. Did I say, normal? What happens normally? We have had instances of 6 weeks to 6 months. How often do government things take more time than we want or feel they need to happen? Was this a Big surprise? The government, the court, and the DMV was taking more time to resolve his license issue. Is anybody chasing after your tax refund? Is anybody looking after your social security check? Another fantasy to believe that this process is always fluid or fluent or quick.

Problem TWO: Not being able to obtain Official Certified Out-of State Records

When it comes to travel these days, getting identification, licensure of any type, anywhere, and all things certification/proof related, the government wants (demands) more and more these days. In the post terrorist, fear-laden world that we live and work in, nothing that is government document-driven is happening fast or easy.

The DMV demanded an Out-Of-State License record (abstract) no more than 10 days old. This led to a domino effect because our client was from another state. Because of the original delay by the Court and the New York DMV his abstract (driving history from earlier) was now too old to use. The DMV wanted an official "new" one.

Oh the fun of "**Getting Certified Official Sealed Original Records**" while living Out-Of-State

Try getting your official license record from another state quickly and easily. The special word is official (as in certified) because getting a record online may be easy but getting an original stamped sealed certified document not so much.

Problem THREE: New York State Courts (Judges) DO NOT GRANT driver's licenses or privileges.

Yes, we (lawyers) tell people all the time that the Court is going to give you a hardship privilege license or grant you a full privilege back BUT Now the Truth.

In a DWI case, the hardship privilege following a Court Suspension is like taking away your Turkey dinner, but leaving you some peas and potatoes. I didn't give you a "hardship" dinner, I left you with minimum (or minimal) food to subsist. Certainly not a complete unrestricted license, but the bare bones minimal (work, school, and medical care) privileges.

When a Court grants you a 20 day license at the end of your case (at sentencing), again, they don't give you a license. They are merely placing a STAY (DELAY) upon the DMV mandatory suspension/revocation.

A STAY of a suspension is merely A DELAY of a suspension. Again, nothing is truly awarded, it is just not taken NOW!

Nothing is Ever Given, Awarded, or Granted

Only the DMV of any state gives a license/privilege to drive a car. Courts, Judges, and even prosecutors love to say they are giving things, but in truth they are merely delaying the DMV of NOT taking everything. They even believe it so it must be the truth, right? That sounds like the government doesn't it? They "cut" government spending by spending less.

So back to the story, our client wanted us to do something about his license. He felt as though we were a disappointment. We should have made the Court "grant" him another 20 day license or privilege. After all the Court and the DMV messed up so they should accept responsibility (another fantasy) and make it right. The day we see an insurance company, government agency, or licensing authority apologize and make amends, we all better check our temperature. We

must be running a fever because it doesn't happen very often. A nice story but nothing more.

We Told the Truth and We were Not to Be Believed

We tried to explain the madness of his request, but alas it was too late. He could not appreciate or deal with the reality of it all. The truth was not going to be accepted or welcomed or understood at this point or perhaps any other point in the future. Despite any lack of error, we always feel bad when our communication is broken or misunderstood by a client.

TWO KEY Takeaways:

1. When entering (embarking) on your New York State DWI case if you have an OUT-OF-STATE license be prepared to get a copy of your state's driving record (history) immediately at the start of the case: for the Court, for the drug/alcohol evaluation, and for District Attorney negotiations

AND

2. Be prepared to get a certified (official) copy at the end (close in time) of the matter for the New York State DMV. You will need it to get a post revocation New York conditional license.

DISCLAIMER

This book is not intended as legal advice. Nor does it create an attorney-client relationship. It is simply written to educate people charged with a DWI or other "DW" offense in New York State.

It is the goal of this book to help those individuals facing license issues as a result of a DW charge and to point out important parts of the DW process. In our research, we found no other publication that thoroughly laid out the effects of a DW charge in New York on a person's privilege to drive. Bear in mind, every case is different and has its own unique set of challenges. There is no "one way" to defend a DWI or DWAI drugs charge. The best advice we can give anyone facing DW charges of any kind is to consult with a local, licensed attorney who focuses on DWI defense and licensure. With any DW charge, it is important to understand BOTH the criminal case and the related license issues.

ABOUT THE AUTHORS

MICHAEL CYR



Michael (Mike) Cyr is the lead attorney at Cyr & Associates. Mike practices primarily in the areas of New York DWI defense, criminal defense, and traffic-related matters. He has represented clients in courts throughout the Finger Lakes region of New York, including the following counties: Tompkins, Chemung, Steuben, Cortland, Broome, Tioga, Madison, Schuyler, Yates, Seneca, Cayuga, Cayuta, and Onondaga. Mike also defends many students in the area (from Ithaca College, Cornell University, SUNY Binghamton University, and Tompkins -Cortland Community College (TC3)). He has authored the book, *How to Graduate with a Degree and WITHOUT a Record: A New York College Student's Guide* (2015). He has also co-authored with Larry Newman, *Everything You Need to Know About a New York DWI and Your Driver's License* (2015). Mike is a member of the National College of DUI Defense, New York State Defenders, and Tompkins County Bar Association. He is licensed to practice in New York, Massachusetts, and Maine.

LAWRENCE NEWMAN



Lawrence (Larry) Newman is of counsel to Cyr & Associates. He practices mainly in the area of New York DWI defense. He has represented clients in courts through out the Finger Lakes region of NYS. He is co-author of several publications including the 2011 and 2013 editions of *Strategies for Defending DWI Cases in New York*. Dr. Newman also has degrees in chiropractic and human biology. He was also chosen as a 2013 Rising Star in DWI/DUI in Upstate New York by *Super Lawyers*. Larry is a member of the National College of DUI Defense, New York State Defenders, and National Association of Criminal Defense Lawyers. He is licensed to practice in New York, New Jersey, Pennsylvania, and Florida.

**COPYRIGHT CYR & ASSOCIATES 2015
Educational Purposes Only.**

If you have any questions we failed to answer or need a FREE consultation on a DWI case, you can contact our office at:

CYR & ASSOCIATES
401 E. State St. Ste. 400
Ithaca, NY 14850

T: (607) 229-5184

F: (607) 216-9417

Email: mike.ithacadwi@gmail.com

Website: www.ithacadwi.com

Facebook: www.facebook.com/ithacadwi

Twitter: @ithacadwi

Blog: www.ithacadwi2.blogspot.com