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H. Patrick Furman

University of Colorado Law School

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There Must Be Fifty Ways to Lose Your (Driver's) License

by H. Patrick Furman

The typical Colorado driver has little inkling of the variety of reasons for which the Motor Vehicle Division ("DMV") can suspend, revoke or deny a driver's license. Even lawyers who regularly practice in traffic court have trouble keeping up with the bewildering array of justifications for DMV action against a driver's license.

Given the fact that a driver's license is often important for work, school, day care and a variety of other purposes, it is essential for both prosecutors and defense lawyers to have as complete an understanding as possible of the consequences their actions can have on a client's driver's license. This article summarizes the ways in which a license can be denied, suspended or revoked. The article does not cover the special rules which are applicable to chauffeurs and truck drivers.

Point Suspension Revocations

Colorado assesses points for almost all traffic convictions, and the most well-known way to lose a license is to accumulate too many points. The license of a driver who is age twenty-one or older will be suspended on the accumulation of twelve points in twelve months or eighteen points in twenty-four months. The license of a driver who is age eighteen or older, but less than twenty-one (a provisional driver) will be suspended on the accumulation of nine points in twelve months, twelve points in twenty-four months or fourteen points during the life of the license. The license of a driver

under age eighteen (a minor driver) will be suspended on the accumulation of six points in twelve months or seven points during the life of the license.¹

Points are counted against a license as of the date of the offense, not the date of conviction, even though the actual assessment of points cannot occur until there is a conviction.² The number of points assessed for the various offenses is set forth in CRS § 42-4-123(5). Conviction, as used in this statute, includes a traditional conviction, a traffic infraction conviction or default judgment,³ a plea of *nolo contendere* and a conviction of a municipal ordinance which is substantially similar to a state statute.⁴

An excess of points results in a suspension (rather than a revocation) of the driving privilege, meaning that the driver may apply for a probationary license enabling him or her to drive to and from such places as work, school and day care.⁵ The maximum length of a suspension ordered pursuant to this authority is one year.⁶

Express Consent Revocations

Colorado's express consent law is designed to aid law enforcement in the detection and apprehension of drivers who are under the influence of, or impaired by, the ingestion of alcohol or other drugs. The law is designed to encourage drivers to submit to a chemical test of their blood or breath (or, when drug use is suspected, a urinalysis) to determine alcohol content. It also penalizes drivers who refuse to take a chemical test or who take such a test but fail it.⁷

Pursuant to the express consent law, the DMV must revoke for twelve months the license of a driver who refuses to take a chemical test of blood or breath.⁸ If that

driver is subsequently convicted of a charge arising out of the same incident and is subject to another revocation because of that conviction (such as for having accumulated too many points or having sustained two alcohol convictions in five years), the subsequent revocation must be consecutive to the express consent revocation.⁹ A person whose license is revoked under this provision is not eligible for a probationary license, no matter how great the need for such a license.¹⁰

If the driver takes the chemical test but fails it by having a blood alcohol content of .10 or greater, the DMV must revoke the license.¹¹ The period of revocation is three months for the first revocation and twelve months for any subsequent revocations. Just as with a revocation based on a refusal to take a chemical test, a driver revoked under this provision is not eligible for a probationary license.¹²

Specific Offense Conviction Revocation

Conviction of certain offenses, or combinations of offenses, carries with it an automatic revocation whether or not the conviction results in the driver having accumulated too many points. Most of the offenses are traffic offenses, while others are related to the use or regulation of motor vehicles and a few are simply expressions of public policy. The offenses are set forth in CRS § 42-2-122.

**Column Ed.: H. Patrick Furman,
University of Colorado School of
Law, Boulder—(303) 492-8126**

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As far as pure traffic offenses are concerned, the statute mandates revocation on a conviction of either (1) driving under the influence of a controlled substance or habitual user of a controlled substance¹³ (which carries a mandatory one-year revocation¹⁴) or (2) failing to render aid in a traffic accident involving death or personal injury.¹⁵ It also mandates revocation on three reckless driving convictions within two years, two DUI/DWI/DUI *per se* convictions within five years and three DUI/DWI/DUI *per se* convictions in any time period.

The last-described revocation must be an indefinite suspension of no less than two years. The driver may not be reinstated until he or she has completed a Level II alcohol and drug education and treatment program and passed the regular license test. This section also provides that a minor's license shall be revoked on a first DUI/DWI/DUI *per se* conviction.

Driving-related convictions that subject a driver to revocation are:

- 1) vehicular homicide, CRS § 18-3-106;
- 2) vehicular assault, CRS § 18-3-205;
- 3) criminally negligent homicide while driving a vehicle, CRS § 18-3-105;
- 4) failing to maintain proof of financial responsibility after having been ordered to do so, CRS §§ 42-4-1213 and -1214; and
- 5) any felony in the commission of which a motor vehicle was used (which carries a mandatory one-year revocation¹⁶).

Convictions which relate to the regulation of motor vehicles and which result in a revocation are first- or second-degree perjury relating to the ownership of a motor vehicle and making a false affidavit or a false statement under oath in connection with the ownership or operation of a motor vehicle.

The legislature has chosen to mandate a license revocation based on certain offenses which are not traffic or motor vehicle related as part of the sanction for the commission of those offenses. Those offenses include (1) all of the felony drug use and distribution offenses set forth in CRS § 18-18-404, -405 and -406, and (2) any attempt, conspiracy or solicitation to commit those offenses. For the purposes of license revocation, both a plea of *nolo contendere* and a deferred judgment and sentence are considered as convictions. A juvenile ad-

judication for such acts also is considered a triggering conviction.¹⁷

A revocation under this section is three months on the first conviction and one year on a second or subsequent conviction.¹⁸ The Colorado Supreme Court recently upheld the constitutionality of this portion of the revocation statute against an attack that it amounted to a seizure of property and that there was no nexus between the commission of these offenses and a person's driver's license.¹⁹ The court held that the right to drive is not a fundamental right and that the seizure of licenses is reasonably related to the legitimate government objective of preventing the use or sale of controlled substances because it punishes and deters offenders.

"The statutes relating to the denial, suspension, revocation and reinstatement of driver's licenses are confusing and occasionally contradictory."

The legislature has adopted the same general posture with regard to certain related offenses as it has with regard to these drug offenses. The revocation statute mandates revocation on conviction of the unlawful obtaining or attempting to obtain, or possession of beer, wine or liquor by a person under age twenty-one.²⁰ The revocation of a minor or provisional license under this section must run consecutively to any other previous or subsequent revocation.²¹ If the license being revoked is a minor or provisional license, the revocation is to be for three months for a first conviction, six months after a second conviction and one year after a third or subsequent conviction.²² Such a licensee who is revoked for the first time under this section may substitute twenty-four hours of useful public service, if ordered by the court, for the three-month revocation.

Finally, the revocation statute mandates the revocation of the license of any person who has been adjudged mentally incompetent by a court of competent jurisdiction when that court has specifically found that the incompetency renders the person incapable of safely operating a motor vehicle.

Except as specifically noted above, revocations under CRS § 42-2-122 are for a period of one year. Actual reinstatement of the privilege to drive on the expiration of the period of revocation is discussed below.

Other statutes also provide for a license revocation. A conviction for failure to provide proof of insurance²³ requires indefinite suspension unless the driver provides proper proof of insurance to the DMV within twenty days of the notice of suspension. Such a suspension remains in effect until the driver provides proof of financial responsibility.²⁴ A conviction of misuse of licenses, titles, permits or license plates or the permission of such unlawful use authorizes the DMV to deny a license to an otherwise qualified applicant.²⁵

Habitual Traffic Offender Revocations

The habitual traffic offender statute²⁶ is designed to provide maximum safety on the roads, deter repeat offenders and impose severe sanctions on drivers whose traffic record demonstrates "their indifference to the safety and welfare of others and their disrespect for the laws of this state. . . ."²⁷ The license of a driver who is declared to be an habitual traffic offender must be revoked for five years. The driver is not eligible for a probationary license.²⁸

A driver can achieve habitual offender status in a variety of ways. The most common way is to sustain three major traffic offense convictions in a seven-year period. Major traffic offenses, set forth in CRS § 42-2-202, are (1) driving under the influence, (2) driving with ability impaired, (3) reckless driving, (4) driving under suspension, (5) driving under revocation, (6) driving under denial, (7) vehicular assault, (8) vehicular homicide, (9) manslaughter resulting from the operation of a motor vehicle, (10) criminally negligent homicide, (11) joyriding, (12) leaving the scene of an accident involving death or personal injury and (13) knowingly making a false affidavit or swearing or affirming falsely to a matter required by motor vehicle laws.

Obviously, convictions in Colorado state court are covered by this list. However, CRS § 42-2-202(2)(b) also provides that convictions under federal law, municipal ordinance or the laws of any other state also may result in an habitual offender revocation if those other laws or ordinances substantially conform to the comparable Colorado statute.

The convictions used by the DMV to declare a driver to be an habitual traffic offender must be separate and distinct offenses arising out of separate acts. The statute actually provides that all offenses committed within a one-day period should be treated as one offense.²⁹ Therefore, if a driver is convicted of both driving under the influence and driving under suspension based on one episode, the two convictions will be counted as one for the purposes of the habitual offender statute.

A less common way by which a driver is declared an habitual traffic offender is by sustaining a larger number of less serious traffic convictions within a five-year period. Conviction, within a five-year period, of ten or more offenses which carry four or more points results in an habitual traffic offender declaration. The same is true of conviction, within a five-year period, of eighteen or more offenses which carry three points or less.

Miscellaneous Revocations

There are a variety of other convictions, statutes and actions which trigger a revocation. While these miscellaneous revocations do not arise with great frequency, they have the same impact on a client as any other revocation.

The DMV can, for a variety of reasons, refuse to issue a license to an otherwise qualified applicant. "Habitual drunkards" can be denied a license,³⁰ as can anyone who suffers from a mental disease or defect and who has not been restored to competency.³¹ A license also can be denied to anyone who is in the country in violation of federal immigration laws.³² Any person who has illegally operated a motor vehicle without a license or in violation of an instruction permit, within three years prior to applying for a license, may be denied a license.³³ A failure to give the DMV accurate information when applying for a license may result in a cancellation or denial of the license.³⁴ The DMV also can place restrictions on any license which it does issue.³⁵

The DMV also will check out every driver who applies to renew a driver's license. Any person who, at the time of applying for a renewal of his or her license, has an outstanding judgment for failure to pay money owed as the result of a traffic violation will be denied a license.³⁶ The existence of a warrant for failure to appear for a traffic case, except a traffic infraction, has the same result.³⁷

Drivers often ask whether convictions they have sustained in another state

will be held against them in Colorado. Colorado has signed an interstate compact which provides some answers. The Driver License Compact, CRS § 24-60-1101 *et seq.*, establishes the goal of improving cooperation among the states in the reporting of traffic violations and the enforcing of licensing restrictions.

The Compact requires participating states to report every traffic conviction to the home state of the licensee, describing the violation, the statute or ordinance, the court hearing the case and the manner in which the conviction was obtained.³⁸ Under the Compact, Colorado must treat the following convictions as if they had occurred in Colorado for the purpose of revocation, suspension or denial: manslaughter or negligent homicide resulting from the operation of a motor vehicle, driving under the influence of alcohol or drugs, any felony in the commission of which a motor vehicle is used and leaving the scene of an accident involving death or personal injury.³⁹

Differences among the states in the precise name or description of these offenses do not matter, as long as the offense is substantially similar to the offense in the home state.⁴⁰ The Compact also requires Colorado to treat all other reported convictions as if they had occurred here.⁴¹

Reinstatement of the Privilege to Drive

It is important for counsel to advise drivers whose licenses have been suspended that the termination of a revocation period does not entitle them to jump immediately behind the wheel and drive. Before that driver can legally drive, he or she must get reinstated.

The termination of the revocation period makes the driver eligible for reinstatement, but the driver must go to a DMV office and meet all the other requirements for reinstatement before he or she can legally drive again. These other requirements may include the payment of a reinstatement fee, proof of insurance,⁴² written test, driving test and proof of successful completion of substance abuse counselling.⁴³ A driver who does not fulfill these requirements, but drives anyway on the theory that the revocation has ended, is subject to prosecution for driving under suspension.

The fact that the driver was granted a probationary license during the period of the suspension does not alter this result. In the Colorado Supreme Court case of *Department of Revenue v. Brakhage*,⁴⁴

the driver had the length of his suspension extended after he was caught driving while the original suspension order was in effect. He argued that such an extension of his suspension was improper because he had been issued a probationary license during his original suspension and was legally driving under that probationary license.

The court acknowledged that a suspension order does not automatically expire at the end of the term of suspension and that the driver must still seek official reinstatement before he or she can legally drive. However, the court held that any probationary license issued in connection with that suspension does expire. The extension of the period of suspension was affirmed.

It is also important to advise drivers that any moving violation committed during any period of revocation or suspension will result in an extension of the revocation or suspension.⁴⁵ The driver need not be convicted of driving under revocation or suspension. Conviction of any moving violation will trigger the extension. The extension is for a period of one year.⁴⁶

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Drivers also should be reminded that, with few limited exceptions, only Colorado can give a person permission to drive in this state. Obtaining a license from another state does not permit a person to drive in Colorado if his or her privilege to drive in Colorado has been revoked, suspended or denied by the DMV.⁴⁷

Conclusion

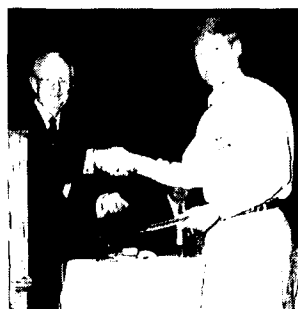
The statutes relating to the denial, suspension, revocation and reinstatement of driver's licenses are confusing and occasionally contradictory. However, given the importance of a license to so many people, it is important that counsel handling a traffic case be familiar with the statutes. A client who is improperly advised about the license consequences of a particular plea or conviction will understandably be upset when DMV takes some action the client was not expecting. The client may attempt to withdraw the plea or seek redress directly from counsel—either of which is, to say the least, unpleasant.

NOTES

1. CRS § 42-2-123(1)(a).
2. CRS § 42-2-123(2)(a).
3. *People v. Lewis*, 745 P.2d 668 (Colo. 1987) (traffic infraction procedure held to be constitutional).

4. CRS § 42-2-121(3).
5. CRS § 42-2-123(11).
6. CRS § 42-2-124(1).
7. *Zahtila v. Motor Vehicle Division*, 560 P.2d 847 (Colo.App. 1977); see also *Augustino v. Department of Revenue*, 565 P.2d 933 (Colo. 1977) (different treatment of drivers who refuse a test and drivers who fail a test is not a denial of equal protection).
8. CRS § 42-2-122.1(1.5)(a)(II) and (5)(b)(III).
9. CRS § 42-2-122.1(5)(c)(II).
10. CRS § 42-2-122.1(6)(a).
11. CRS § 42-2-122.1(1.5)(a)(I), (5)(b)(I) and (5)(b)(II).
12. CRS § 42-2-122.1(6)(a).
13. "Controlled substance" is defined at CRS § 12-22-303(7) to include those substances listed in CRS §§ 18-18-203 to -207.
14. CRS § 42-2-122(1.5).
15. CRS § 42-4-1401 and -1402.
16. CRS § 42-2-122(1.5).
17. CRS § 42-2-121(4).
18. CRS § 42-2-124(2)(b). Counsel should be aware that CRS § 42-2-122(1.5) provides that all revocations under this section shall be for one year. However, the rule of lenity and the more specific provisions of § 42-2-124(2)(b) should control.
19. *People v. Zinn*, 22 Colo.Law. 634 (March 1993) (S.Ct. No. 92SA9, *ann'd* 1/11/93).
20. Specifically, CRS §§ 12-46-112(1)(c) and (d) and 12-47-128(1)(b) and (c).
21. CRS § 42-2-122(2).
22. CRS § 42-2-122(5).
23. CRS § 42-4-1213.
24. CRS § 42-4-1214.
25. CRS § 42-2-119(1)(c).

26. CRS § 42-2-201 *et seq.*
27. CRS § 42-2-201(1).
28. CRS § 42-2-205; *Fuhrer v. Dept. of Motor Vehicles*, 592 P.2d 402 (Colo. 1979).
29. CRS § 42-2-202(1) and (2)(a).
30. CRS § 42-2-103(2)(c).
31. CRS § 42-2-103(2)(d).
32. CRS § 42-2-103(3)(e).
33. CRS § 42-2-123.
34. CRS § 42-2-119(1)(a).
35. CRS § 42-2-114.
36. CRS §§ 42-2-116(3)(b) and 42-4-1505.5(7).
37. CRS § 42-4-1505.5(7)(a)(III).
38. CRS § 24-60-1101, Art. III.
39. CRS § 24-60-1101, Art. IV(a).
40. CRS § 24-60-1101, Art. IV(c).
41. CRS § 24-60-1101, Art. IV(b).
42. The proof of insurance requirements may include compelling the driver to obtain an "SR 22" form, which obligates the insurance company to notify the DMV in the event the insurance is cancelled in the future.
43. *Smith v. Dept. of Revenue*, 793 P.2d 611 (Colo.App. 1990) (DMV may order more extensive alcohol counselling as a condition of reinstatement).
44. 735 P.2d 195 (Colo. 1987).
45. CRS § 42-2-130(3).
46. *Id.*
47. CRS §§ 42-2-120 and -126; *Colorado Department of Revenue v. Smith*, 640 P.2d 1143 (Colo. 1982).



Public Counsel Award Presented at CBA Convention

The Public Counsel of the Year Award was presented to William Morris during the Saturday luncheon program of the CBA Convention. The award is given annually by the CBA Public Counsel Committee in recognition of significant contributions to the advancement of public counsel practice and representation of public clients.

Morris has been an active member of the Public Counsel Committee and is a past Committee chair. He has spent numerous hours assisting public counsel in deciphering state police and fire pension law and was instrumental in establishing an internship program for public counsel offices. Morris is general counsel for the Fire and Police Pension Association.

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