



**STATE OF CONNECTICUT
DEPARTMENT OF ENVIRONMENTAL PROTECTION**



OFFICE OF ADJUDICATIONS

IN THE MATTER OF

***: BOATING DIVISION/
SUSPENSION OF SAFE BOATING
CERTIFICATE
DEP REFERENCE NO. 10-000***

ARTHUR K. HALL

: AUGUST 23, 2010

FINAL DECISION

A hearing was held on August 16, 2010 at the Department of Environmental Protection (DEP) Marine Headquarters in Old Lyme regarding the suspension of the above-named operator's safe boating certificate. General Statutes §15-140q. Representing the parties at the hearing were Christopher Morano and Russell Palmer, legal counsel for Arthur K. Hall and Patricia Horgan and Melinda Decker, legal counsel for the Department of Environmental Protection.

The following exhibits were admitted into evidence, with no objection from the respondent:

DEP-1 through DEP-24

PROCEDURAL HISTORY

Mr. Hall was arrested on June 19, 2010. General Statutes §15-133(d). A Notice of Suspension was mailed to Mr. Hall on June 24, 2010, advising of his right to a hearing prior to the effective date of the suspension to determine probable cause for the suspension. A hearing was requested by Mr. Hall through counsel on June 30, 2010 and a Notice of Hearing was issued to Mr. Hall on July 8, 2010. Attorney Morano requested a continuance on July 19, 2010. I granted this request and continued the matter until August 16, 2010. A revised notice of hearing was sent to the parties on July 20, 2010 after confirmation that all parties were available on the selected date.

FINDINGS OF FACT

The following findings of fact are based on a review of the entire record of this proceeding, a determination of the credibility and the weight to be given to competing evidence, and on reasonable inferences drawn from the evidence.

1. On September 3, 2009, an 18-foot Boston Whaler with Connecticut registration CT5370AE was involved in a single-boat accident on Long Island Sound. The vessel collided with a seawall at approximately 9:30 pm in the vicinity of 49 Old Quarry Road in Guilford. There were four occupants on the vessel at the time of the collision. Those individuals were: Arthur K. Hall, Elizabeth Protzman, Devon Hardy, and Jonathan Cook, all of Guilford. The registered owner of the vessel is Bennet Hall of Guilford, Mr. Hall's father. Mr. Hall was the only occupant of the vessel with a Connecticut Safe Boating Certificate. (Exs. DEP-2, 3, 4, 6, 7, 8, 8a, 8b, 8c, 23; test. 8/16/10, E. Protzman, T. Chemacki.¹)
2. Mr. Hall was operating the vessel at the time of the collision. Mr. Hall had been drinking alcoholic beverages prior to the crash and had the odor of an alcoholic beverage on his breath at the time he was attended to by emergency medical personnel. After the crash, Mr. Hall made statements to first responders that the throttle on the vessel had stuck. (Ex. DEP-2, 3, 9, 10, 23; test. E. Protzman, T. Chemacki.)
3. Mr. Hall was transported to Yale New Haven Hospital by ambulance following the accident. He was attended to in the emergency room at the hospital by Dr. Dirk Johnson, M.D. As part of Mr. Hall's medical care, Dr. Johnson instructed a registered nurse to collect a blood sample. The blood sample was drawn on September 3, 2009 at 11:12 pm. The blood sample was tested for levels of various constituents, including ethyl alcohol. The analysis of the sample revealed a serum alcohol level of 367 milligrams per deciliter (mg/dl). (Ex. DEP-11, 18, 23; test. R. Powers.)
4. Officer Todd Chemacki is an eleven year veteran of the Connecticut Environmental Conservation Police. He is certified as a police officer by the Connecticut Police Officer Standards and Training Council. He has specialized training in boating accident investigation and reconstruction. Officer Chemacki was the lead investigator for the boating accident that occurred on September 3, 2009. (Test. T. Chemacki.)

¹ The testimony and proceedings in this matter were recorded. No written transcript has been prepared. The audio recording of this hearing is on file with the Office of Adjudications and is the official record of this proceeding.

5. Officer Chemacki compiled witness statements in the normal course of his investigation. These witness statements and other evidence led Officer Chemacki to believe that Mr. Hall was operating the vessel at the time of the collision with an elevated blood alcohol content. With this belief and based on the evidence collected, Officer Chemacki applied for a search warrant for the medical records of Arthur K. Hall, including any chemical blood analysis, compiled as a result of his treatment after the accident at Yale New Haven Hospital. The application for a search warrant, sworn to under oath by Officer Chemacki and Sgt. Eric Lundin, was approved by Judge Joseph A. Licari, Jr. on February 26, 2010. On the same date, the warrant was served on Yale New Haven Hospital and Officer Chemacki received a copy of medical records including a results report for a chemical blood analysis performed on Arthur K. Hall on September 3, 2009. The results indicated a serum blood alcohol level of 367 mg/dl. The Controlled Substances and Toxicology Laboratory for the State of Connecticut determined that this serum blood alcohol level of 367 mg/dl is equivalent to a whole blood alcohol content of 0.32 grams per 100 milliliters (g/100 ml). Mr. Hall's blood alcohol content was over 0.08 at the time of the incident. (Exs. DEP-9, 10, 11, 16, 17, 18, 19, 23; test. T. Chemacki, R. Powers.)

6. Based on the evidence collected during his investigation, Officer Chemacki applied for an arrest warrant for Mr. Hall for numerous offenses, including the reckless operation of a vessel in the first degree while under the influence of intoxicating liquor in violation of General Statutes §15-140l. The warrant was signed by State's Attorney Brian Sibley and Judge Earl B. Richards. After being informed of the warrant for his arrest on June 18, 2010, Mr. Hall turned himself into police on June 19, 2010 and was arrested. (Ex. DEP-20, 21, 23; test. T. Chemacki.)

CONCLUSIONS OF LAW

The Commissioner of Environmental Protection has the authority to suspend the safe boating certificate of an individual arrested for operating a vessel with an elevated blood alcohol content. Under General Statutes §15-140q(j), when the arresting officer obtains test results for an operator injured as a result of a boating accident that indicate he was operating with an elevated blood alcohol content, the Commissioner may suspend the operator's safe boating certificate after notice and an opportunity for hearing. Each hearing conducted under this section shall be limited to a determination of the following issues:

- (1) Whether the peace officer had probable cause to arrest the person for operating a vessel while under the influence of intoxicating liquor or drugs, or both, or while such person has an elevated blood alcohol content;
- (2) whether such person was placed under arrest;
- (3) whether such person was operating the vessel;
- (4) whether the results of the analysis of the blood of such person indicate that such person had an elevated blood alcohol content; and
- (5) whether the blood

sample was obtained in accordance with conditions for admissibility as set forth in subsection (b) of section 15-140r. General Statutes §15-140q(j).

Mr. Hall was identified as the operator by a credible witness in two separate sworn statements taken within hours of the incident in question and these statements were corroborated by that witness's direct testimony during the course of this proceeding and were not rebutted. In addition, he was the only occupant of the vessel with a safe boating certificate, he made statements that the boat had malfunctioned, and he was familiar with the vessel and its operation. Based on these witness statements, the circumstantial evidence, and the results of chemical blood analysis performed immediately after the boating incident by a registered nurse and obtained lawfully through execution and return of a search warrant approved by a superior court judge, the officer had probable cause to arrest Mr. Hall for operating the vessel while under the influence of alcohol and he was arrested. These results indicate that Mr. Hall had a blood alcohol content of 0.32. Substantial evidence provided by the department supports an affirmative finding on the first four elements of the statutory inquiry articulated in subsection (j) of §15-140q.

Counsel for Mr. Hall argues that the DEP failed to present any evidence on the fifth element of the inquiry and that because there cannot be an affirmative finding on that element the suspension must be vacated. The fifth element requires me to determine whether the blood sample was obtained in accordance with the conditions for admissibility articulated at General Statutes § 15-140r(b). A review of that subsection reveals no stated conditions for admissibility. Instead it indicates that the Commissioner of Public Safety is responsible for promulgating regulations regarding the testing and chemical analysis of blood, breath or urine. Further review shows that the Commissioner of Public Safety has promulgated regulations pursuant to this authority. Regs., Conn. State Agencies §§ 15-140r-1 through 10. The regulations detail procedures for the certification and approval of testing analysts, testing methods, and testing equipment for the forensic analysis of blood breath and urine. The regulations do not specifically outline conditions for admissibility of test results. Furthermore, the regulations specifically do not apply to analysis of samples taken as part of medical diagnostic testing. Regs., Conn. State Agencies § 15-140r-2. Mr. Hall's blood was tested as part of his medical diagnosis and treatment. The referenced regulations neither supply the referenced conditions for admissibility nor are they applicable to the type of blood sample relied on in the arrest of Mr. Hall.

The lack of articulated conditions for admissibility in the referenced statute presents a dilemma about what to do with hospital test results from an injured operator that are obtained after there is probable cause to suspect the operator was under the influence of alcohol. The respondent maintains that the DEP has not provided evidence to support an affirmative finding on the fifth element. DEP responds that it is legally impossible to comply with a statute and set of regulations that do not apply to the situation at hand and that do not clearly articulate standards of admissibility. Instead, the DEP relies on the existence of admissibility standards in

criminal prosecutions for the seizure and use of hospital test results taken from an injured operator outlined in General Statutes §15-140s. The DEP argues further that the respondent is not prejudiced by the application of criminal admissibility standards to the test results that indicate Mr. Hall had an elevated blood alcohol content.

Although it is clear that subsection (j) of § 15-140q references subsection (b) of §15-140r, subsection (b) and the referenced regulations contain no conditions for admissibility that can be used in a finding on the fifth element of 15-140q(j).² However, the legislature provided the Commissioner with authority to suspend the safe boating certificate of someone arrested on a warrant when hospital test results were obtained by a search warrant sometime after the incident and show the operator had an elevated blood alcohol content. §15-140q(j). The process outlined in §15-140q(j) preserves the ability of the Commissioner to keep the waters of the state and the boating public safe while recognizing that an injured operator may need time to recover from injuries sustained in the accident and may not be in a position to refuse chemical blood analysis. To further that intent and protect the due process rights of an operator, the legislature provided a hearing process with a limited inquiry, including the conditions on admissibility of hospital blood results. If the elements of the inquiry are answered in the affirmative, a first-time offender can have his safe boating certificate suspended for up to 90 days. If an element is answered in the negative, then the suspension is to be stayed.

In construing a statute, common sense must be used and courts will assume that the legislature intended to accomplish a reasonable and rational result. *Red Hill Coalition, Inc. v. Town Planning and Zoning Commission*, 212 Conn. 727, 737-38 (1989). The legislature did not intend for it to be impossible to suspend an operator by introduction of the fifth element in subsection (j) of §15-140q. It is reasonable to assume the legislature intended to protect a respondent by ensuring conditions are met before the results of a hospital blood sample can be seized and used against him in the administrative process. However, when the statute referenced contains no conditions for admissibility, it cannot be said that the inquiry must cease there. If that were the case, it is arguable that no operator could be suspended after an arrest by warrant using the results from a hospital blood analysis. This would be unreasonable and would not further the obvious intent of the statute.

² §15-140r(b) reads “(b) The Commissioner of Public Safety shall ascertain the reliability of each method and type of device offered for chemical testing and analysis of blood, of breath and of urine and certify those methods and types which said commissioner finds suitable for use in testing and analysis of blood, breath and urine, respectively, in this state. The Commissioner of Public Safety, after consultation with the Commissioner of Public Health, shall adopt regulations governing the conduct of chemical tests, the operation and use of chemical test devices and the training and certification of operators of such devices and the drawing or obtaining of blood, breath or urine samples as said commissioner finds necessary to protect the health and safety of persons who submit to chemical tests and to insure reasonable accuracy in testing results. Such regulations shall not require recertification of a peace officer solely because such officer terminates such officer's employment with the law enforcement agency for which certification was originally issued and commences employment with another such agency.”

The unreasonableness of the result obtained by the acceptance of one possible alternative interpretation of an act is a reason for rejecting that interpretation in favor of another which would provide a result that is reasonable. *Red Hill Coalition, Inc. v. Town Planning and Zoning Commission*, 212 Conn. 727, 737-38 (1989). By requiring that samples meet “conditions for admissibility,” the legislature protected the due process and personal privacy rights of the operator. However, it is a rule of statutory construction that those who promulgate statutes or rules do not intend to promulgate statutes or rules that lead to absurd consequences or bizarre results. *State v. Spears*, 234 Conn. 78, 92 (1995). To avoid the bizarre results the respondent’s theory suggests, other relevant sections of the statute must be examined to achieve a balance between the legislature’s intent to protect the respondent’s due process and privacy rights while recognizing the Commissioner’s duty to protect the boating public from unsafe operators through the authority to suspend the safe boating certificate of someone that operates a vessel under the influence of alcohol. A court must interpret a statute as written... and it is to be considered as a whole, with a view toward reconciling its separate parts in order to render a reasonable overall interpretation. *Connecticut Resources Recovery Authority v. Planning & Zoning Commission*, 46 Conn. App. 566, 571 (1997); *Vivian v. Zoning Board of Appeals*, 77 Conn. App. 340, 350 (2003).

As the Department argues, section 15-140s presents clear conditions for admissibility of blood samples taken from an injured operator.

Evidence respecting the amount of alcohol or drug in the blood of an operator of a vessel involved in an accident who has suffered or allegedly suffered physical injury in such accident, which evidence is derived from a chemical analysis of a blood sample taken from such person at a hospital after such accident, shall be competent evidence to establish probable cause for the arrest by warrant of such person for a violation of subsection (d) of section 15-133 and *shall be admissible and competent in any subsequent prosecution thereof if*: (1) The blood sample was taken in the regular course of business of the hospital for the diagnosis and treatment of such injury; (2) the blood sample was taken by a person licensed to practice medicine in this state, a qualified laboratory technician, an emergency technician II or a registered nurse; (3) a police officer has demonstrated to the satisfaction of a judge of the Superior Court that such officer has reason to believe that such person was operating a vessel while under the influence of intoxicating liquor or drug, or both, and that the chemical analysis of such blood sample constitutes evidence of the commission of the offense of operating a vessel upon the waters of this state while under the influence of intoxicating liquor or drug, or both, in violation of subsection (d) of section 15-133; and (4) such judge has issued a search warrant in accordance with section 54-33a authorizing the seizure

of the chemical analysis of such blood sample. Emphasis added. General Statutes § 15-140s.

When subsection (j) of 15-140q is read with reference to this section it is reasonable to assess the admissibility of this type of blood sample in accordance with the conditions articulated in section 15-140s. The legislature clearly wanted to place some conditions on the seizure and use of hospital blood results in the administrative suspension process. The failure of the statute to reference a section that provides actual conditions for admissibility cannot be a fatal flaw when another valid section, in fact the very next section, provides the required conditions. The conditions articulated in §15-140s protect and do not prejudice the respondent. It is reasonable to use those standards and examine the admissibility of the blood sample for compliance with the conditions articulated in §15-140s.

The respondent argues that it was not on notice that §15-140s could be used because §15-140r(b) is referenced in the original suspension notice. The notice quotes the language of §15-140q(j). The technical flaw in the statute does not change its intent that certain conditions must be met before the result is admissible and that the department bears the burden of proving it has met those conditions.³ These conditions provide the necessary protections for the respondent while allowing the Department to use the results of a hospital blood analysis if it meets them. When two constructions are possible, courts will adopt the one which makes the statute effective and workable, and not one that leads to difficult and possibly bizarre results. *Red Hill Coalition, Inc. v. Town Planning and Zoning Commission*, 212 Conn. 727, 737-38 (1989). Examining the admissibility of the blood test results in light of the conditions articulated in §15-140s makes the statute effective and workable and advances its intent to protect the rights of the respondent.

The blood sample meets the conditions articulated in §15-140s. The department has established through the presentation of substantial evidence that the sample was taken in the regular course of business of the hospital for the treatment of Mr. Hall's injuries sustained in the boating accident; that the sample was taken by a registered nurse; that Officer Chemacki demonstrated to a superior court judge that he had sufficient reason to believe that Mr. Hall was operating the vessel with an elevated blood alcohol content; and that the judge issued an effective search warrant to seize the chemical blood analysis of Mr. Hall from September 3, 2009. Based on the results and conversion of this analysis by the State Toxicology Lab from a serum alcohol level of 367 mg/dl to a whole blood alcohol content of 0.32 and the credible witness statements, there was probable cause to arrest Mr. Hall.

³ If the inquiry stopped at §15-140r(b), the department would also have a credible argument that there are no conditions on admissibility because the referenced section articulates none. This argument too is unacceptable and would be an equally unintended and bizarre result.

This administrative record contains substantial evidence to support my findings of fact and the reasonable conclusions I draw from those facts.⁴ The evidence supports my finding that Mr. Hall was operating the vessel on September 3, 2009 at the time it collided with the seawall at 49 Old Quarry Road. Officer Chemacki, a trained and experienced officer, conducted a thorough investigation and based on witness statements and other evidence collected during the course of the investigation, had sufficient reason to believe Mr. Hall was operating the vessel with an elevated blood alcohol content at the time of the accident. This belief was confirmed when Officer Chemacki received results of Mr. Hall's chemical blood analysis conducted in the normal course of his treatment for injuries sustained from the accident that indicated a blood alcohol content over the legal limit of 0.08. General Statutes §15-140q(n). This evidence was lawfully seized from the hospital after application for and issuance of a search warrant.

Having found in the affirmative on the five factors enumerated in General Statutes §15-140q(j), and, pursuant to the authority delegated to me by the Commissioner of Environmental Protection, §22a-2, **I find that the safe boating certificate of Arthur K. Hall should be suspended.**

ORDER

The safe boating certificate of **Arthur K. Hall** is hereby suspended for 90 days, *effective August 23, 2010 through November 21, 2010*. **Arthur K. Hall** is hereby **ordered to surrender his safe boating certificate**, by personal delivery or first class mail, to the Division of Boating, Department of Environmental Protection, 333 Ferry Road, Old Lyme, CT 06371-0280, *within 2 days of receipt of this decision*.

Entered this 23rd day of August, 2010, as a final order of the Commissioner of Environmental Protection by:


Kenneth M. Collette, Hearing Officer

⁴ *Pizzo v. Commissioner of Motor Vehicles*, 62 Conn. App. 571, 577 (2001), quoting *Murphy v. Commissioner of Motor Vehicles*, 254 Conn. 333, 343 (2000) (standard of review of an administrative decision is whether there is substantial evidence in record to support agency's findings of fact and whether conclusions drawn from facts are reasonable).

SERVICE LIST

In the matter of Arthur K. Hall
(Suspension of Safe Boating Certificate)
DEP Reference No. 10-000

PARTY

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