

Pitfalls of Practice: Warning to DWI and Vehicle & Traffic Practitioners



Bakshi

By Sunil Bakshi and Joseph A. Leta

To those attorneys who regularly handle DWI arrests and vehicle and traffic matters, new regulations were recently passed that could have devastating effects on your client's relicensure. How devastating, you may ask? If your client has five or more alcohol or drug-related driving convictions over his or her lifetime, that client is now subject to a permanent ban on relicensure. Even an individual with three alcohol or drug-related driving convictions within 25 years could face a permanent ban on relicensure if they were involved in a "serious driving offense."



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Serious driving offenses include: a fatal accident; a driving-related penal law conviction; a conviction of two or more traffic violations for which five or more points are assessed; or 20 or more points accumulated from any violations incurred over the client's entire driving history. Assuming that a third-time offender does not have a serious driving offense on their record, they will now be without a full driver's license for in excess of 10 years, which includes a five-year period of time that they will be subject to a DMV-mandated igni-

tion interlock device. In addition, you will want to prepare your clients for drug and alcohol assessments by a licensed evaluator on almost any relicensure following revocation related to an alcohol or drug-related driving conviction.

Overall, what does this mean for practitioners? Your client's driving history is now of vital importance, because a new conviction could easily lead to a lifetime driving ban. Advising your clients of these consequences as part of your representation is vital. Furthermore, in our experience, clients have little to no idea of the contents of their past driving history. We cannot count the number of clients who swear they have not been convicted of a DUI in New York state, or fail to mention a DWI conviction that occurred more than 10 years ago. As practitioners, we must make sure that our clients provide us with their driver's license abstracts or have DMV on the phone to go over their record in detail before advising them on how to proceed with their case. The abstract of their driving record may not give the requisite history necessary to give the appropriate advice.

We have spoken with many attorneys about these new regulations, and they feel that though they have been enacted, they will not pass constitutional muster once challenged before the courts.

However, as practical attorneys, we cannot hide our heads in the sand and pretend these regulations do not exist - unless we feel like battling malpractice claims. As with the passage of Leandra's Law, we need to understand the intricacies and be prepared to advise our clients accordingly. While the DMV presents a brief overview of the new regulations on their Web site, we suggest that you review the regulations as codified in the statutes in detail (15 N.Y. A.D.C. §§ 3.2(c)(4), 132.1, 132.2, 132.3, 134.7, 134.10(b), 134.11, 136.4(b), 136.5, 136.10). However, even after a thorough review of these regulations, we remain concerned about their administration, especially as it relates to out-of-state convictions.

The costs to our clients for DWI arrests are more than just financial now; it could mean the loss of their livelihood through the permanent or extended loss of their driver's license. If our clients choose to drive on a permanently revoked license, they will be facing Felony Aggravated Unlicensed Operation charges, which will only exponentially intensify an already difficult situation. Therefore, it is imperative that we make our clients aware of the full effect these new regulations can have. [B]

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*"Still round the corner there may wait,
a new road or a secret gate."*

~ J. R. R. Tolkien
