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**IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA**

**No. 19-0362**

**ADAM HOLLEY, ACTING COMMISSIONER,  
DIVISION OF MOTOR VEHICLES,**

**Petitioner,**

**v.**

**TERESA MAYNARD, DIRECTOR AND  
CHIEF HEARING EXAMINER, OFFICE  
OF ADMINISTRATIVE HEARINGS,**

**Respondent,**

**and**

**CLARENCE SIGLEY,**

**Party in Interest.**

**BRIEF OF THE DIVISION OF MOTOR VEHICLES**

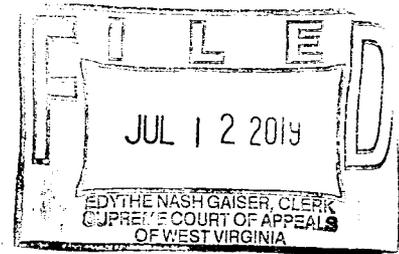
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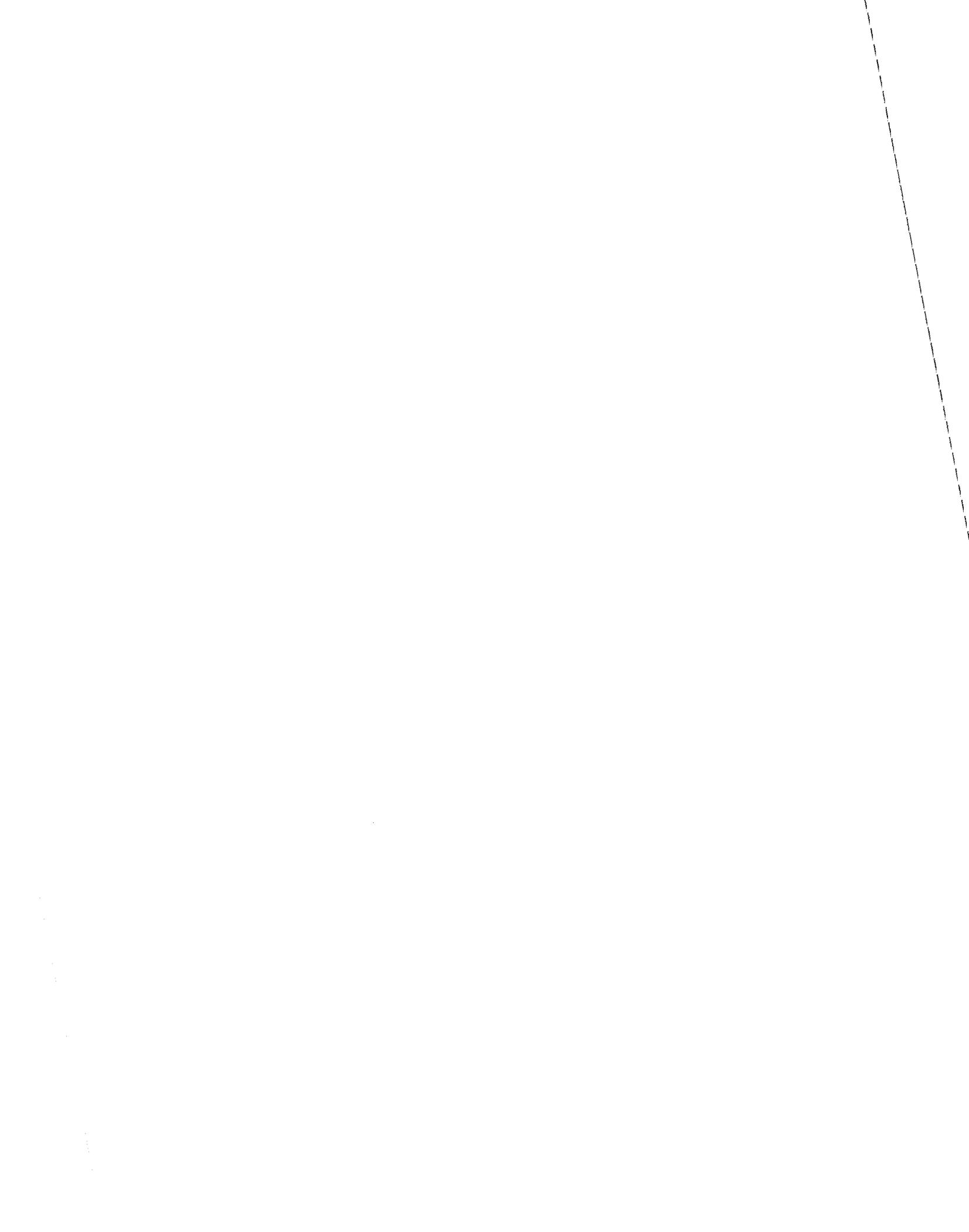
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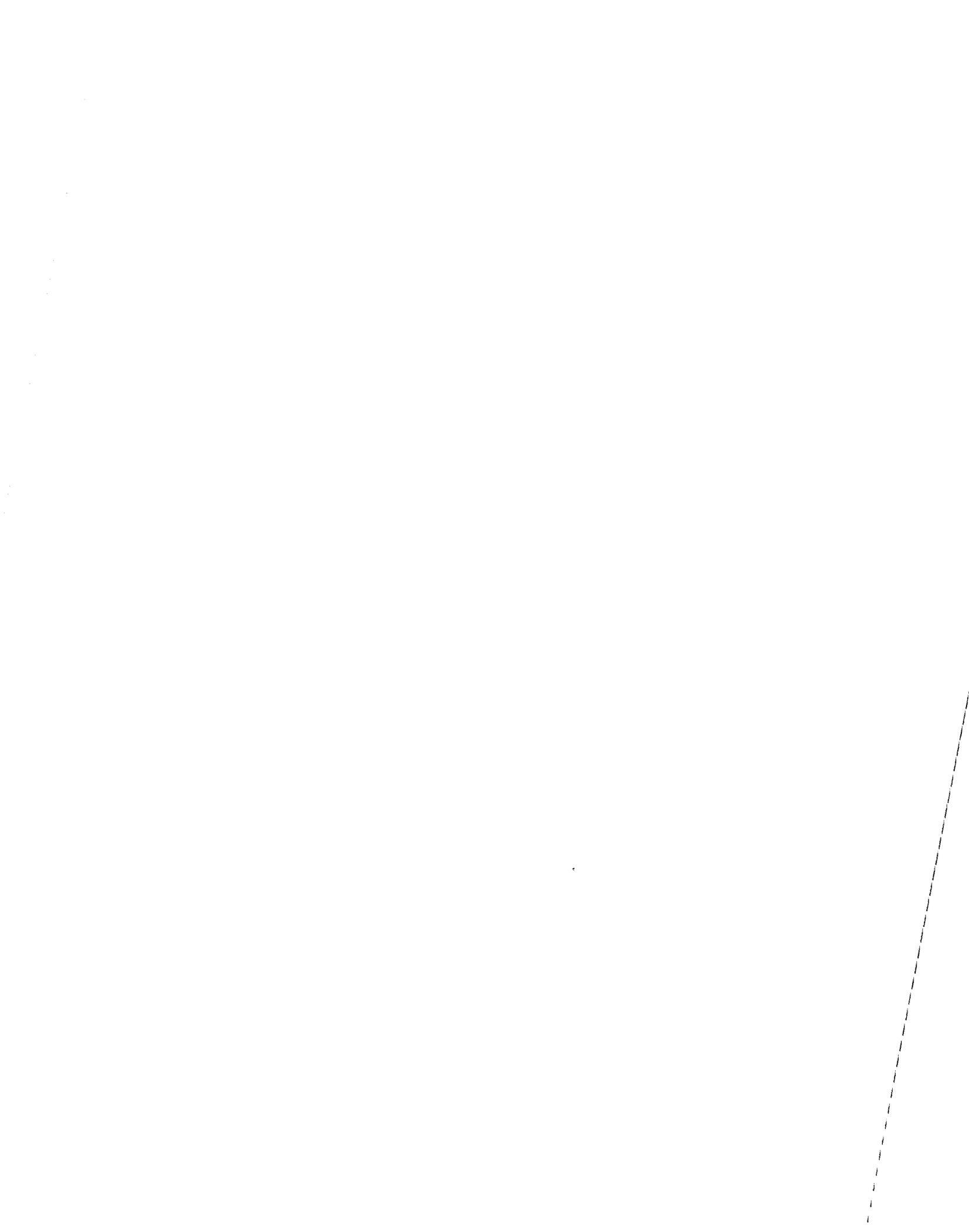
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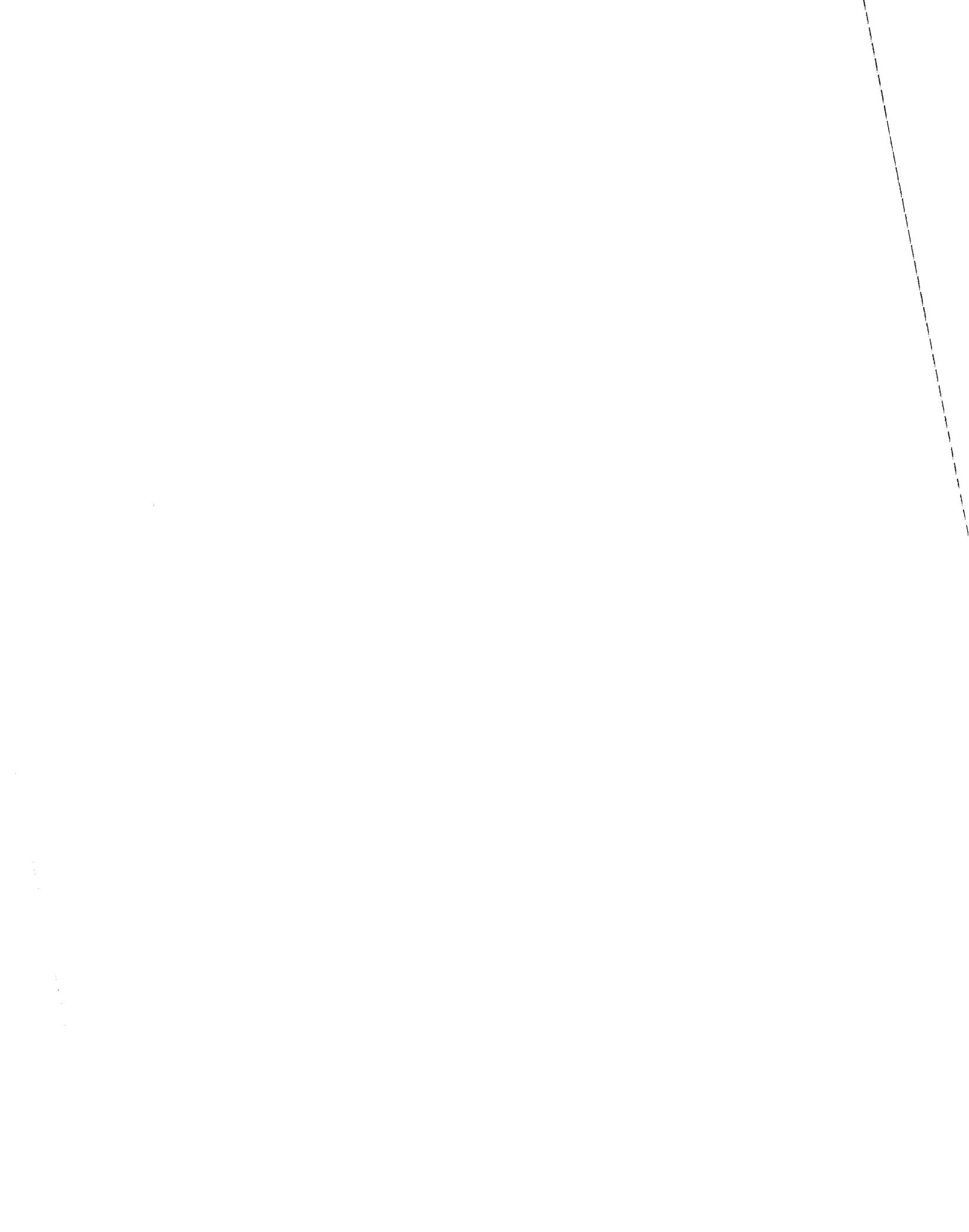
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Now comes Adam Holley<sup>1</sup>, Acting Commissioner of the West Virginia Division of Motor Vehicles (“DMV”) and the successor to Patricia S. Reed, by and through his undersigned counsel, and hereby submits the *Brief of the Division of Motor Vehicles* pursuant to the *Scheduling Order* entered by this Court on April 22, 2019.

### **I. ASSIGNMENT OF ERROR**

**The circuit court erred in dismissing this matter as premature because the Office of Administrative Hearings lacked both jurisdiction and authority to hold an administrative hearing when a driver has been revoked upon conviction after pleading guilty to the offense of driving a motor vehicle while under the influence of alcohol, drugs or controlled substances.**

### **II. STATEMENT OF THE CASE**

The DMV is a state agency with responsibility for, *inter alia*, enforcing statutory provisions relating to the privilege to drive a motor vehicle in West Virginia. W. Va. Code §§ 17A-2-1 (1951), 17B-3-1 (1994), 17C-5A-1 (2008) *et seq.* The Office of Administrative Hearings (“OAH”) is “a separate operating agency within the Department of Transportation.” W. Va. Code § 17C-5C-1(a) (2010). The OAH has jurisdiction to hear and determine all appeals from the decisions or orders of the DMV enumerated in W. Va. Code § 17C-5C-3 (2010).

On April 19, 2017, the DMV issued an *Order of Revocation* under File Number 315895C, revoking the driving privileges of Clarence Sigley, the party in interest, for driving under the influence (“DUI”) of controlled substances and/or drugs. (WVSCA App<sup>2</sup>. P. 25.) The DMV issued

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<sup>1</sup> On March 31, 2019, Patricia S. Reed retired as the Commissioner of the DMV; therefore, pursuant to Revised Rule of Appellate Procedure 42(c), her successor has been automatically substituted as a party herein.

<sup>2</sup> The DMV included an appendix with its pleading in the matter before the circuit court below. To avoid confusion with the page numbers in that appendix which is included with the Appendix filed contemporaneously with the *Brief of the Division of Motor Vehicles*, all references herein shall be to “WVSCA App. at P.”

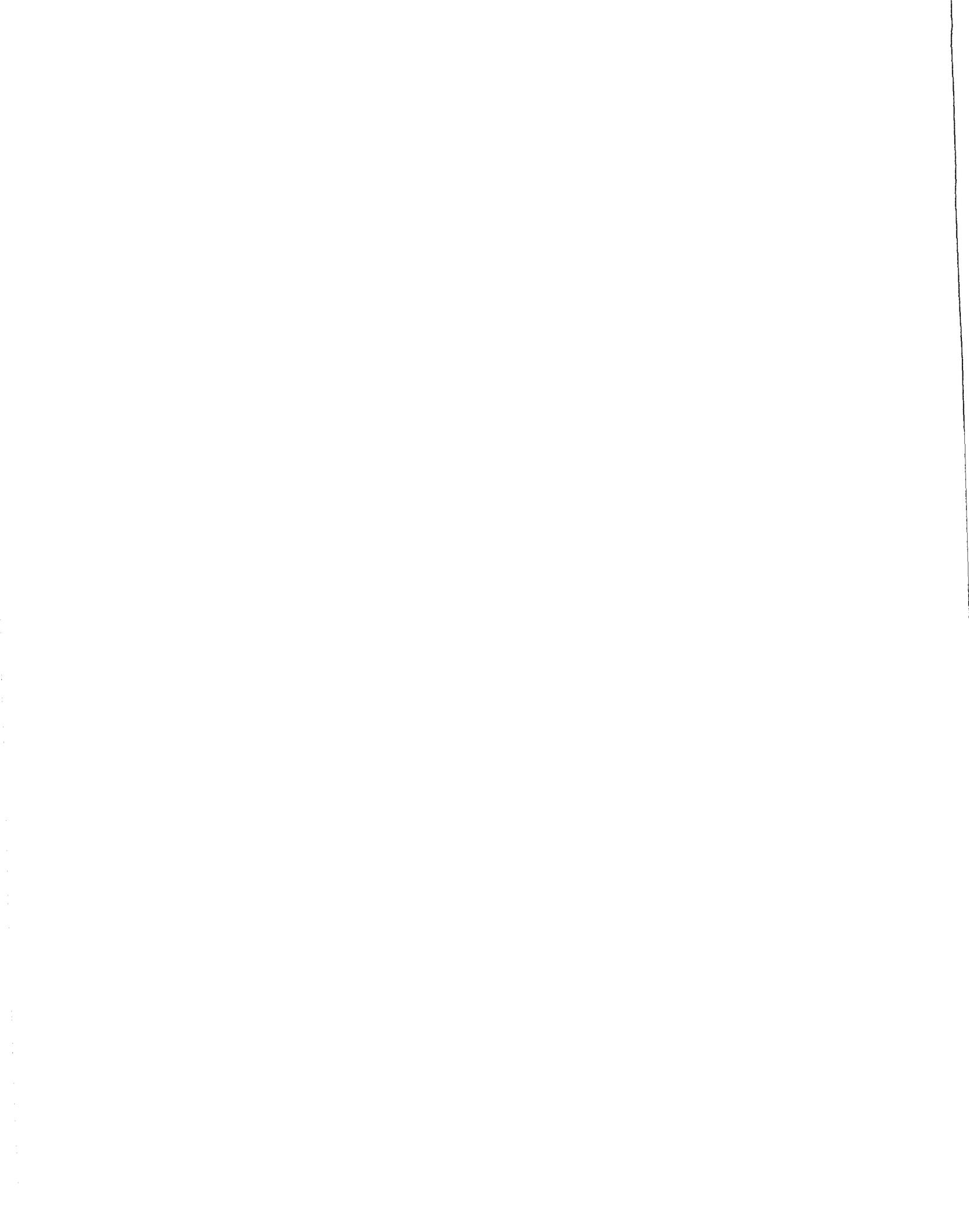


the order based upon receipt of the DUI Information Sheet and criminal narrative from the Investigating Officer. (WVSCA App. PP. 26-36.) Almost a year later on March 21, 2018, Mr. Sigley, his counsel, the Harrison County Assistant Prosecuting Attorney, and Harrison County Magistrate Frank DeMarco signed a “Deferred Adjudication Agreement/ Plea Agreement” wherein Mr. Sigley pled guilty to the offense of “DUI with Drugs 1st Offense.” (WVSCA App. PP. 39-44.) On October 12, 2018, in accordance with W. Va. Code § 17C-5A-1a (2010)<sup>3</sup>, the DMV issued an *Order of Revocation* under File No. 315895D based upon receipt of Mr. Sigley’s guilty plea entered in the magistrate court. (WVSCA App. PP. 45-46.) On November 5, 2018, Mr. Sigley, through counsel Todd F. La Neve, filed a *Written Objection and Hearing Request Form* with the OAH in File Number 315895D. (WVSCA App. PP. 47-51.) Mr. Sigley did not allege that he was not the person named in the *Order of Revocation* in the D file. *Id.* W. Va. Code § 17C-5A-1a (2010).

On November 15, 2018, the OAH sent Mr. Sigley’s counsel a letter denying him a hearing in the D file because the “West Virginia State Code does not provide for an administrative hearing in cases where a criminal conviction has occurred.” (WVSCA App. P. 54.) However, the OAH left Mr. Sigley “in hearing status for the same incident which is also contained in File No. 315895C.” (WVSCA App. P. 52.) Also on November 15, 2018, Mr. Sigley’s counsel emailed the OAH asking why the OAH would permit the hearing on the C file to proceed if he was not entitled to a hearing in the D file. Mr. Sigley’s counsel further indicated that he intended to “pursue an appropriate Writ and will be seeking attorneys [sic] fees from any potentially liable defendant agency we will name in the proceeding.” (WVSCA App. P. 53.)

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<sup>3</sup>“For purposes of this section, a person is convicted when the person enters a plea of guilty or is found guilty by a court or jury.” W. Va. Code § 17C-5A-1a (e) (2010).



On November 28, 2018, the DMV rescinded the *Order of Revocation* issued in the C file (WVSCA App. P. 54), and the OAH entered an *Order Rescinding Denial and Granting Administrative Hearing* in the D file. (WVSCA App. PP. 55-56) The OAH's order indicated that

although West Virginia Code § 17C-5-1a(c) affords the Commissioner of the West Virginia Division of Motor Vehicles the authority to determine whether a person has been convicted of a DUI offense or has entered into "Deferral" as established under West Virginia Code § 17C-5-2b, and subsequently to enter an order revoking the person's driving privileges for committing a DUI Offense, the Commissioner is specifically limited to reviewing "the transcript of judgment of conviction, or the imposition of a term of conditional probation" pursuant to § 17C-5-2b when making such determination. Neither of these conditions are [*sic*] applicable in the present case.

(WVSCA App. PP. 55-56.)

On February 12, 2019, the DMV filed a *Verified Complaint for Writ of Prohibition* in the Circuit Court of Kanawha County alleging that the OAH is precluded from having an administrative hearing when a driver's license has been revoked upon conviction (resulting from a guilty plea) for the offense of driving a motor vehicle while under the influence of alcohol, drugs or controlled substances. (WVSCA App. PP. 4-60.) Before the OAH or Mr. Sigley filed answers, the circuit court dismissed the matter as prematurely filed finding that the OAH has jurisdiction to hear appeals pursuant to W. Va. Code § 17C-5C-3 *et seq.* (WVSCA App. PP. 2-3.) The circuit court failed to address whether the OAH had authority to conduct an administrative hearing when a drunk driver pleads guilty and the DMV revokes upon conviction.

### **III. SUMMARY OF ARGUMENT**

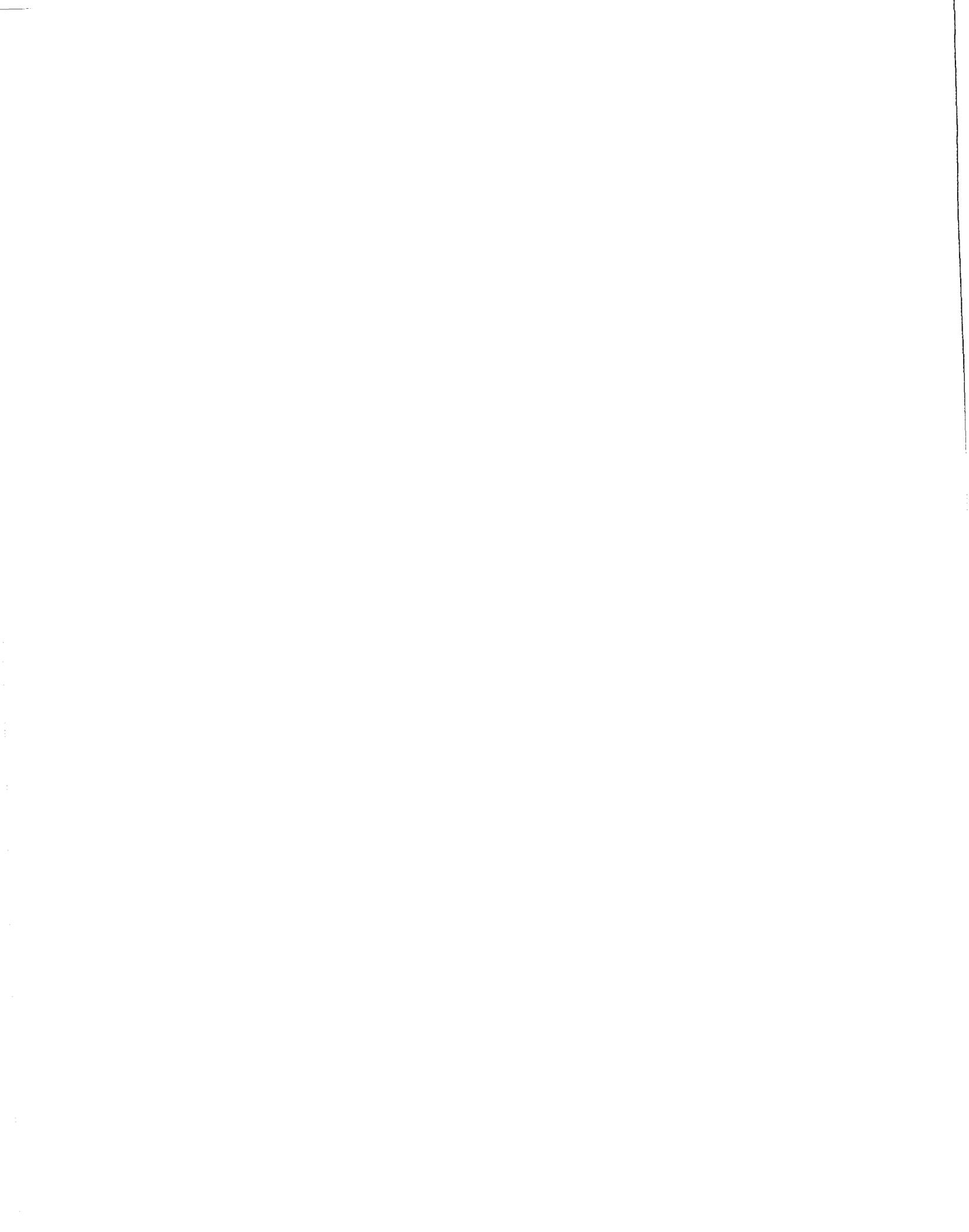
Mr. Sigley pled guilty to DUI, and as a result, the DMV revoked his license. Instead of recognizing Mr. Sigley's conviction based revocation, the OAH determined that the DMV did not have authority to consider Mr. Sigley's guilty plea as a conviction. The OAH is not authorized to



hold an administrative hearing when a driver is revoked pursuant to W. Va. Code § 17C-5A-1a (2010) or to interpret the DMV's enabling statutes. Instead of addressing whether the OAH had the jurisdiction or authority to hold an administrative hearing when the DMV revokes a license upon conviction, the circuit court erred in summarily dismissing the DMV's *Verified Complaint for Writ of Prohibition* from its docket as premature.

This Court has voiced its concerns over post-hearing delay by the OAH. *See, Straub v. Reed*, 239 W. Va. 844, 851, 806 S.E.2d 768, 775 (2017) (“Accordingly, we find the OAH’s eleven-month delay in issuing its final order in this matter egregious. A driver should not have to wait this long to receive an order following an administrative hearing, and these delays cannot be condoned.”); *Reed v. Winesburg*, 241 W. Va. 325, 825 S.E.2d 85, 90 (2019) (“This Court is troubled by the extreme delay between the arrest and the OAH hearing.”); *Reed v. Grillot*, No. 17-0691, 2019 WL 1012160, at \*5 (W. Va. Mar. 4, 2019) (memorandum decision) (“We wish to remind the administrative agencies involved in these cases of the pressing need to resolve these matters expeditiously to ensure the safety of the roadways in this State.”); *Holley v. Morrison*, No. 18-0239, 2019 WL 1765295, at \*1 (W. Va. Apr. 19, 2019) (memorandum decision) (“No definitive explanation for the OAH's nearly four-year delay in issuing its order appears in the record. Counsel for the DMV stated that because the OAH is a separate statutory agency from the DMV, she could not speak for it; nevertheless, counsel offered that “there was a [backlog] in getting the hearings heard and it backed up the final orders.”).

This Court has also expressed its vexation over the lack of reasons for the cause of the delay. “Unbelievably, it took the OAH two and a half years between the administrative hearing and the date it issued its order revoking Mr. Boley’s driver’s license. Why the two and a half year delay? I’ll let



the circuit court's order speak for itself: 'The Respondent [DMV] presented **no evidence** to the Court addressing the reason or cause for the delay of the decision to revoke [Mr. Boley's] driving privileges.' (Emphasis added.)" *Reed v. Boley*, 240 W. Va. 512, 518, 813 S.E.2d 754, 760 (2018) (Ketchum, J., *dissenting*).

The instant matter illustrates how the OAH hearing examiners and administrative staff are utilizing their time scheduling and holding moot administrative hearings instead of entering final orders in a timely manner.

#### **IV. STATEMENT REGARDING ORAL ARGUMENT AND DECISION**

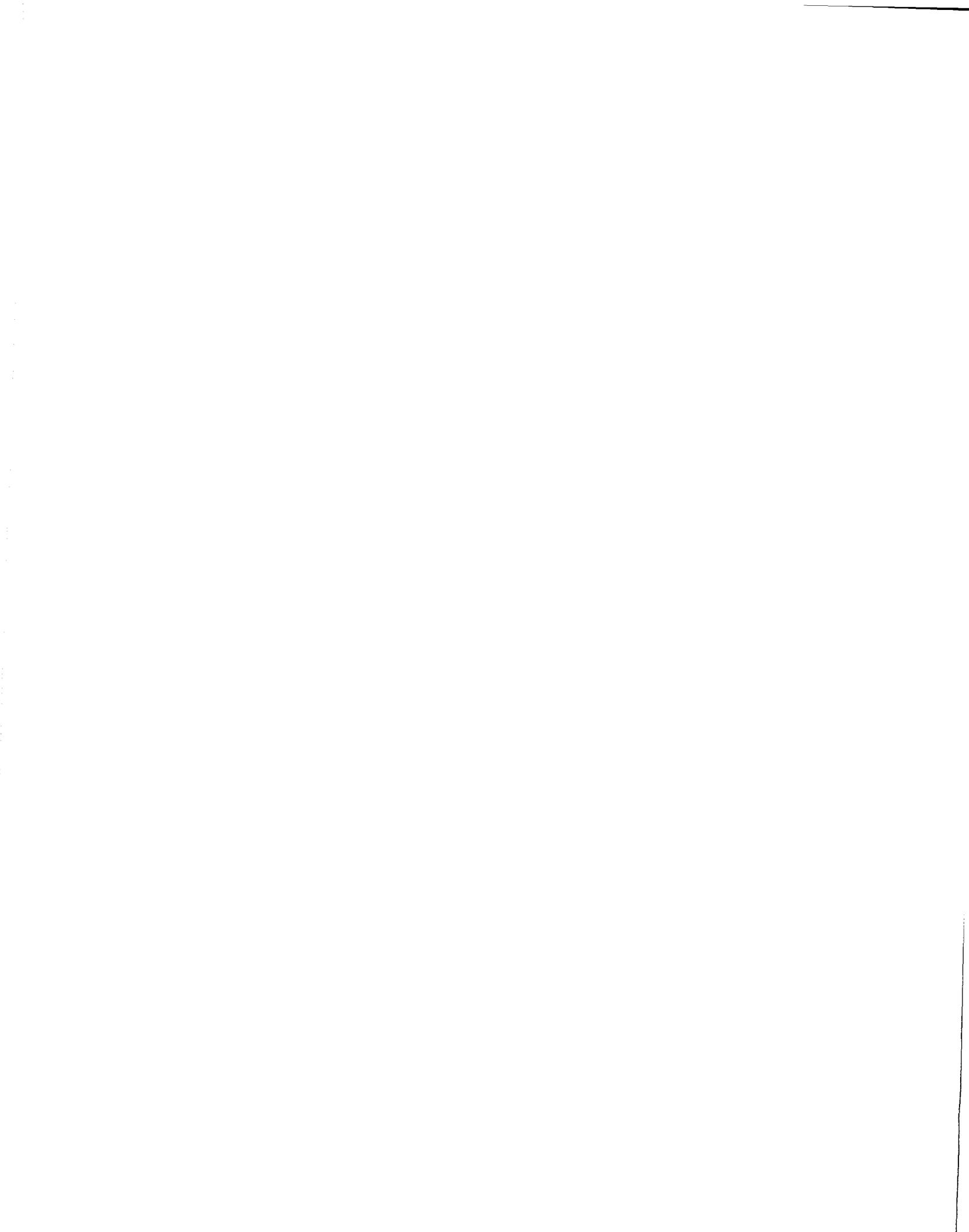
Pursuant to Rule 20 of the Revised Rules of Appellate Procedure (2010), the DMV requests oral argument because this is a matter of first impression and involves an issue of fundamental public importance.

#### **V. ARGUMENT**

##### **A. Standard of Review**

"Where the issue on an appeal from the circuit court is clearly a question of law or involving an interpretation of a statute, we apply a *de novo* standard of review." Syl. Pt. 1, *Chrystal R.M. v. Charlie A.L.*, 194 W. Va. 138, 459 S.E.2d 415 (1995). "Lack of jurisdiction of the subject matter may be raised in any appropriate manner . . . and at any time during the pendency of the suit or action." *Lewis v. Municipality of Masontown*, 241 W. Va. 166, 820 S.E.2d 612, 616 (2018).

Recently, in *State ex rel. Evans v. Robinson*, 197 W. Va. 482, 475 S.E.2d 858 (1996) (per curiam), we emphasized again that where the challenge goes only to abuse of legitimate powers, we " 'will review each case on its own particular facts to determine whether a remedy at law' " makes a writ of prohibition inappropriate. *Id.*, 197 W. Va. at 489 n. 11, 475 S.E.2d at 865 n. 11 (quoting Syl. pt. 2, *Woodall v. Laurita*, 156 W. Va. 707, 195 S.E.2d 717 (1973)).



*State ex rel. Hoover v. Berger*, 199 W. Va. 12, 21, 483 S.E.2d 12, 21 (1996).

**B. The circuit court erred in dismissing this matter as premature because the Office of Administrative Hearings lacked both jurisdiction and authority to hold an administrative hearing when a driver has been revoked upon conviction after pleading guilty to the offense of driving a motor vehicle while under the influence of alcohol, drugs or controlled substances.**

In its *Final Order*, the circuit court summarily determined that the DMV's request for a writ of prohibition was

premature as it pre-empts the Office of Administrative Hearings (hereinafter 'OAH') jurisdiction to hear appeals in administrative proceedings delegated to the OAH by W. Va. Code § 17C-5C-3, *et seq.* Further, Petitioner in this case may even lack the standing to bring this action but, for now, as Clarence Sigley is the respective party with a liberty interest at stake, this matter, too, is premature.

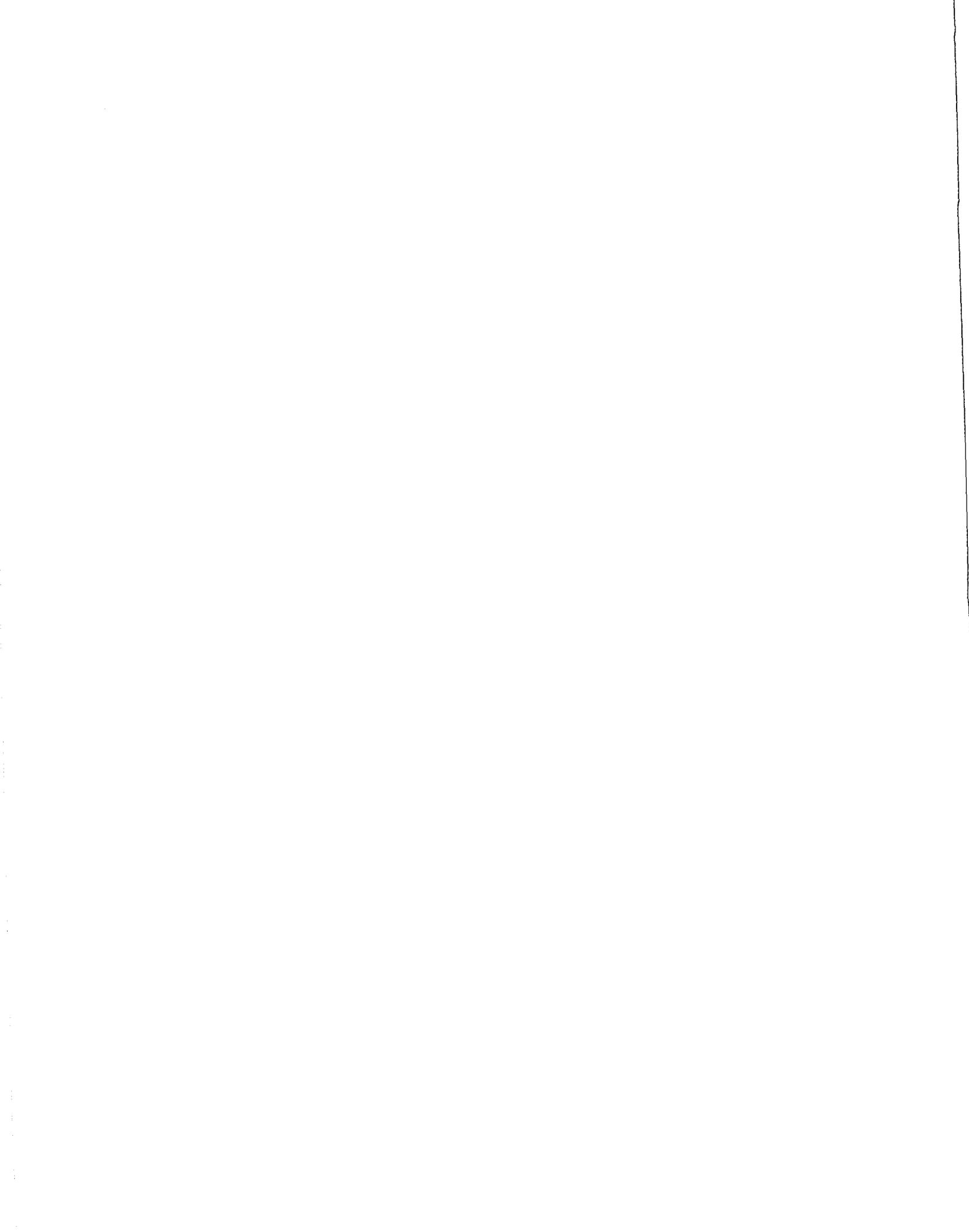
(WVSCA App. P. 2.)

Mr. Sigley, his counsel, the prosecuting attorney, and the magistrate signed a "Deferred Adjudication Agreement/ Plea Agreement" ("Agreement") wherein Mr. Sigley pled guilty to the offense of "DUI with Drugs 1<sup>st</sup> Offense." The Agreement also states that

upon entry of said plea, the parties shall recommend to the Magistrate Court of Harrison County, West Virginia, that both the acceptance of the guilty plea and the adjudication of this/these offense(s) be deferred for a period of one (1) year from the date of the execution of this agreement pursuant to West Virginia Code § 61-11-22a, provided the Defendant abides by the following conditions and requirements of this agreement . . .

The *Guilty or No Contest Plea* signed by Mr. Sigley and his counsel also indicates that Mr. Sigley intended to "enter a guilty or no contest plea to the offense of DUI with Drugs 1<sup>st</sup> Offense" and that the matter has a "deferred adjudication."

West Virginia Code § 17C-5-2b (2016), entitled "Deferral of further proceedings for certain first offenses upon condition of participation in Motor Vehicle Alcohol Test and Lock Program;



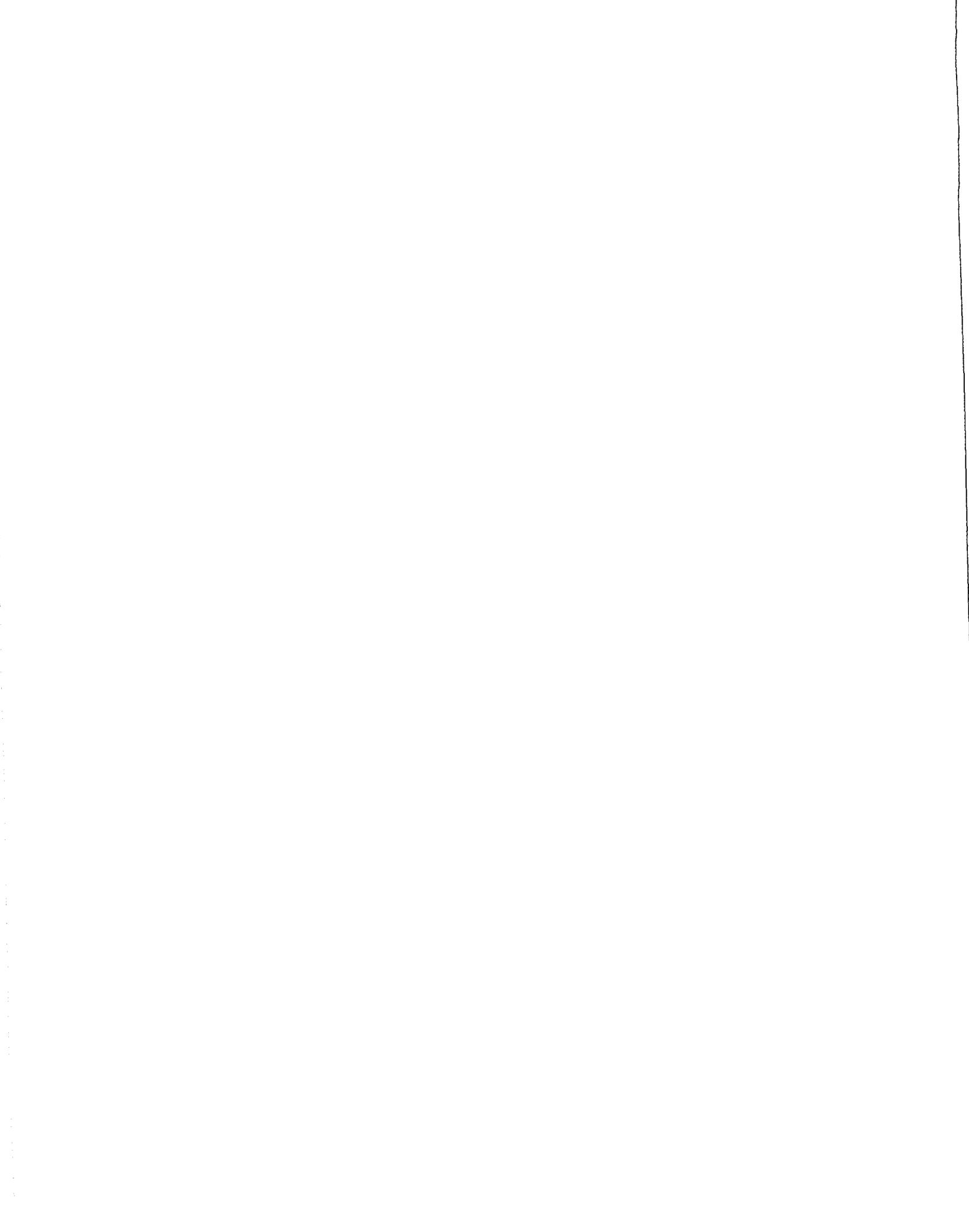
procedure on charge of violation of conditions,” is the sole statute which provides any sort of deferred adjudication for a DUI offense. It is the only “legal” process for deferring adjudication of a DUI charge. To be eligible for deferred adjudication for a DUI offense, the offense must have included alcohol or be an offense including drugs but combined with alcohol, be a first offense DUI, and not involve a commercial driver’s license holder. Further, the driver must enter a guilty plea and waive his right to an administrative hearing regarding the DUI offense.

Because he missed the 30 day period to request deferral and because Mr. Sigley’s DUI offense was not his first and included drugs only, he was ineligible for deferred adjudication under any statute. This Court’s recent decision in *Young v. State, infra*, supports the DMV’s position. “A person charged with the crime of driving under the influence (DUI), pursuant to Chapter 17C, Article 5 of the West Virginia Code, may **only** seek deferred adjudication as permitted by W. Va. Code § 17C-5-2b (2016).” [Emphasis added.] Syl. Pt. 4, *Young v. State*, 241 W. Va. 489, — S.E.2d. — (2019). Nevertheless, Mr. Sigley pled guilty to DUI. In addition, he manufactured the process which disposed of his criminal case and did not report the disposition to the DMV. Instead, the DMV learned of the guilty plea approximately six months later and entered a conviction based revocation because of Mr. Sigley’s guilty plea. Because Mr. Sigley had a guilty plea for a DUI offense, the DMV was required to revoke his driver’s license. W. Va. Code § 17C-5A-1a (c)(2010).

**1. The OAH lacks jurisdiction to hold a hearing when the DMV revokes a license pursuant to W. Va. Code § 17C-5A-1a (2010).**

The Office of Administrative Hearings has jurisdiction to hear and determine all:

(1) Appeals from an order of the Commissioner of the Division of Motor Vehicles suspending a license pursuant to section eight, article two-B, chapter seventeen-B of this code [§ 17B-2B-8];



(2) Appeals from decisions or orders of the Commissioner of the Division of Motor Vehicles suspending or revoking a license pursuant to sections three-c [§ 17B-3-3c], six [§ 17B-3-6] and twelve [§ 17B-3-12], article three, chapter seventeen-B of this code;

(3) Appeals from orders of the Commissioner of the Division of Motor Vehicles pursuant to section two, article five-A [§ 17C-5A-2], of this chapter, revoking or suspending a license under the provisions of section one [§ 17C-5C-1] of this article or section seven, article five [§ 17C-5-7] of chapter;

(4) Appeals from decisions or orders of the Commissioner of the Division of Motor Vehicles denying, suspending, revoking, refusing to renew any license or imposing any civil money penalty for violating the provisions of any licensing law contained in chapters seventeen-B [§§ 17B-1-1 *et seq.*] and seventeen-c [§§ 17C-1-1 *et seq.*] that are administered by the Commissioner of the Division of Motor Vehicles; and

(5) Other matters which may be conferred on the office by statute or legislatively approved rules.

W. Va. Code § 17C-5C-3 (2010).

The DMV issued an *Order of Revocation* under File No. 315895D based upon receipt of Mr. Sigley's guilty plea entered by the magistrate court and in accordance with W. Va. Code § 17C-5A-1a (2010). (WVSCA App. PP. 45-46.) The OAH enabling statutes give the tribunal jurisdiction to hold hearings and determine appeals from orders of the DMV issued pursuant W. Va. Code § 17C-5A-1a (2010). In the present case, the only ground for such a hearing would be for the driver to contest that he was not the person named in the guilty plea. *Id.*

“Prohibition lies only to restrain inferior courts from proceedings in causes over which they have no jurisdiction, or, in which, having jurisdiction, they are exceeding their legitimate powers, and may not be used as a substitute for [a petition for appeal] or certiorari. Syl. Pt. 1, *Crawford v. Taylor*, 138 W. Va. 207, 75 S.E.2d 370 (1953).” Syl. Pt. 3, *State ex rel. Hoover v. Berger*, 199 W. Va. 12, 483 S.E.2d 12 (1996). “When a court is attempting to proceed in a cause without jurisdiction,



prohibition will issue as a matter of right regardless of the existence of other remedies.” Syllabus point 10, *Jennings v. McDougle*, 83 W. Va. 186, 98 S.E. 162 (1919).” *State ex rel. Ford Motor Co. v. McGraw*, 237 W. Va. 573, 788 S.E.2d 319, 322–23 (2016). The circuit court erred in dismissing the DMV’s *Verified Complaint for Writ of Prohibition* without addressing the OAH’s lack of jurisdiction.

**2. The OAH exceeded its legitimate power by interpreting W. Va. Code § 17C-5A-1a (2010).**

The Office of Administrative Hearings is precluded from having an administrative hearing when a driver has been revoked upon conviction after pleading guilty to the offense of driving a motor vehicle while under the influence of alcohol, drugs or controlled substances unless he contests identity. The OAH’s *Order Rescinding Denial and Granting Administrative Hearing* states that

although West Virginia Code § 17C-5-1a(c) affords the Commissioner of the West Virginia Division of Motor Vehicles the authority to determine whether a person has been convicted of a DUI offense or has entered into ‘Deferral’ as established under West Virginia Code § 17C-5-2b, and subsequently to enter an order revoking the person’s driving privileges for committing a DUI Offense, the Commissioner is specifically limited to reviewing ‘the transcript of judgment of conviction, or the imposition of a term of conditional probation’ pursuant to § 17C-5-2b when making such determination. Neither of these conditions are [*sic*] applicable in the present case.

(WVSCA App. PP. 31-32.)

Pursuant to the statute under which Mr. Sigley requested a hearing, “[t]he sole purpose for the hearing held under this section is for the person requesting the hearing to present evidence that he or she is not the person named in the transcript of the judgment of conviction.” W. Va. Code § 17C-5A-1a(c)(2010). Instead of canceling the hearing because Mr. Sigley did not allege that he was not the person who pled guilty, the OAH entered an order interpreting W. Va. Code § 17C-5A-1a(c)



(2010) and declaring that the “Commissioner is specifically limited to reviewing ‘the transcript of judgment of conviction, or the imposition of a term of conditional probation’ pursuant to § 17C-5-2b when making such determination. Neither of these conditions are applicable in the present case.” (WVSCA App. P. 56.)

The role of the OAH is to determine if the DMV has provided sufficient evidence to uphold an administrative license revocation or suspension. It is not the role of OAH to interpret W. Va. Code § 17C-5A-1a(c)(2010) and to determine the DMV’s authority to revoke. As Chief Hearing Examiner for the OAH, Respondent Maynard overreached her statutory authority by interpreting W. Va. Code § 17C-5A-1a(c)(2010) which is not permitted by the OAH’s enabling statutes or its procedural rules. The DMV has the express authority in W. Va. Code § 17A-2-9 (1999) and W. Va. Code § 17C-5A-1a (2010) to apply the statute.

In *Reed v. Thompson*, 235 W. Va. 211, 772 S.E.2d 617 (2015), this Court opined,

[i]n 2010, the Legislature created the OAH and gave it power to hear appeals of certain orders and decisions by the DMV. W. Va. Code § 17C-5C-1 [2010]. The OAH is authorized to conduct hearings over these matters consistent with the statutory provisions in chapters 29A (“State Administrative Procedure Act”), 17B, and 17C of the West Virginia Code. W. Va. Code § 17C-5C-4 [2010.]

235 W. Va. 211, 214, 772 S.E.2d 617, 620. †

An administrative agency may not exercise authority which is not given to it expressly or impliedly in statute.

Administrative agencies and their executive officers are creatures of statute and delegates of the Legislature. Their power is dependent upon statutes, so that they must find within the statute warrant for the exercise of any authority which they claim. *They have no general or common-law powers but only such as have been conferred upon them by law expressly or by implication.*

Syl. Pt. 2, *Mountaineer Disposal Serv., Inc. v. Dyer*, 156 W. Va. 766, 197 S.E.2d 111



(1973) (emphasis added). *See also State ex rel. Hoover v. Berger*, 199 W. Va. 12, 19, 483 S.E.2d 12, 19 (1996) (“An administrative agency . . . has no greater authority than conferred under the governing statutes.”).

*Reed v. Thompson*, 235 W. Va. 211, 214, 772 S.E.2d 617, 620 (2015).

The OAH's interpretation of W. Va. Code § 17C-5A-1a(c)(2010) is not valid unless the agency was given the authority under a statute or administrative rule to do so. *See, Mustard v. City of Bluefield*, 130 W. Va. 763, 766, 45 S.E.2d 326, 328 (1947) (holding that, in absence of specific authority in zoning ordinance or in statute upon which ordinance was based, a board of adjustment had no power to rehear and reconsider its final order). *Reed v. Thompson*, 235 W. Va. 211, 214-215, 772 S.E.2d 617, 620-621 (2015). Whether the OAH has authority to interpret W. Va. Code § 17C-5A-1a(c)(2010) entails a two-part inquiry. *See, Atl. Greyhound Corp. v. Pub. Serv. Comm'n*, 132 W. Va. 650, 659-61, 54 S.E.2d 169, 174-75 (1949).

The first question is whether the OAH's power to interpret W. Va. Code § 17C-5A-1a(c)(2010) is expressly or impliedly granted by statute. *Id.* at 659-660, 54 S.E.2d at 175. If not, the second inquiry is whether the following two conditions are met: (a) the Legislature granted the agency authority to adopt administrative rules of procedure; and (b) the agency adopted an administrative rule allowing it to interpret W. Va. Code § 17C-5A-1a(c)(2010). *Id.* at 661, 54 S.E.2d 175. If the OAH has authority to interpret W. Va. Code § 17C-5A-1a(c)(2010) under an administrative rule (as opposed to a statute), the scope of its authority is strictly limited to what is contained in the rule.

The Office of Administrative Hearings has jurisdiction to hear and determine appeals of suspension orders of the DMV issued pursuant to W. Va. Code § 17B-2B-8; suspension or revocation orders of the DMV issued pursuant to W. Va. Code §§ 17B-3-3c, 17B-3-6, or 17B-3-12;



revocation or suspension orders issued pursuant to W. Va. Code § 17C-5A-2; DMV decisions or orders denying, suspending, revoking, refusing to renew any license or imposing any civil money penalty for violating the provisions of W. Va. Code §§ 17B-1-1 *et seq.* and 17C-1-1 *et seq.*; and other “matters which may be conferred on the office by statute or legislatively approved rules.” W. Va. Code § 17C-5C-3 (2010).

The OAH’s enabling statutes do not give it express authority to interpret *any* statute, including W. Va. Code § 17C-5A-1a(c)(2010). The hearing procedures for the OAH are governed by W. Va. Code § 17C-5C-4 (a-f)(2010). There is nothing in that section of the Code which gives the OAH authority to interpret W. Va. Code § 17C-5A-1a(c)(2010). Similarly, there is nothing in W. Va. Code § 29A-5-1 (1964) *et seq.*, the Administrative Procedures Act, which gives the OAH authority to interpret W. Va. Code § 17C-5A-1a(c)(2010).

In fact, the Administrative Procedures Act limits the administrative hearing agency’s powers to the following:

- (1) Administer oaths and affirmations, (2) rule upon offers of proof and receive relevant evidence, (3) regulate the course of the hearing, (4) hold conferences for the settlement or simplification of the issues by consent of the parties, (5) dispose of procedural requests or similar matters, and (6) take any other action authorized by a rule adopted by the agency in accordance with the provisions of article three of this chapter.

W. Va. Code § 29A-5-1(d) (1964).

Pursuant to its rule-making authority in W. Va. Code § 17C-5C-4a (2012), the OAH promulgated legislative rules in 2013.<sup>4</sup> West Virginia Code R. § 105-1-1 *et seq.* (2010) contains no express provision authorizing the OAH to interpret W. Va. Code § 17C-5A-1a(c)(2010). Therefore,

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<sup>4</sup> The 2016 version of the OAH rules apply to Mr. Sigley’s case as his arrest for DUI occurred in 2017.



it is clear that the OAH has not been granted express statutory authority to interpret W. Va. Code § 17C-5A-1a(c)(2010).

Similarly, the OAH has no implied authority to interpret W. Va. Code § 17C-5A-1a(c)(2010). In making this determination, an agency has only as much authority as is necessary to execute its duties. *Reed v. Thompson*, 235 W. Va. 211, 215, 772 S.E.2d 617, 621 (2015). Furthermore, “this Court must presume that the Legislature did not intend to confer upon the agency any greater authority than what is clearly indicated in statutory language.” *Id.*

This Court has held:

Although an express grant of powers will be determined to include such other powers as are necessarily or reasonably incident to the powers granted, the powers *should not be extended by implication beyond what may be necessary for their just and reasonable execution*. When a court is asked to find implied powers in a grant of legislative or executive authority it must assume that the *lawmakers intended to place no greater restraint on the liberties of a citizen than was clearly and unmistakably indicated by the language they used*.

*McDaniel v. W. Va. Div. of Labor*, 214 W. Va. 719, 727, 591 S.E.2d 277, 285 (2003) (quoting *Walter v. Ritchie*, 156 W. Va. 98, 108, 191 S.E.2d. 275, 281 (1972)) (citation and quotations omitted) (emphasis added).

*Reed v. Thompson*, 235 W. Va. 211, 215, 772 S.E.2d 617, 621 (2015).

It is clear that the OAH does not have express or implied authority via statute or rule to interpret W. Va. Code § 17C-5A-1a(c)(2010), and the circuit court erred in dismissing the matter as premature when the OAH was authorized only to have an administrative hearing if the driver’s identity was at issue. Identity was not an issue below; therefore, the OAH was required to cancel the administrative hearing requested in File No. 315895D.

“The writ of prohibition shall lie as a matter of right in all cases of usurpation and abuse of power, when the inferior court has not jurisdiction of the subject matter in controversy, or, having



such jurisdiction, exceeds its legitimate powers.” W. Va. Code § 53-1-1 (1923). “In that regard, a writ of prohibition shall lie as a matter of right in all cases of usurpation and abuse of power, when the inferior court, although having jurisdiction, exceeds its legitimate powers.” *See, State ex el. Abraham Linc. Corp. v. Bedell*, 216 W. Va. 99, 602 S.E.2d 542 (2004).

This case meets the “general guidelines” set forth in syllabus point 4 of *State ex rel. Hoover v. Berger, supra*, for determining whether to issue a writ of prohibition:

In determining whether to entertain and issue the writ of prohibition for cases not involving an absence of jurisdiction but only where it is claimed that the lower tribunal exceeded its legitimate powers, this Court will examine five factors: (1) whether the party seeking the writ has no other adequate means, such as direct appeal, to obtain the desired relief; (2) whether the petitioner will be damaged or prejudiced in a way that is not correctable on appeal; (3) whether the lower tribunal's order is clearly erroneous as a matter of law; (4) whether the lower tribunal's order is an oft repeated error or manifests persistent disregard for either procedural or substantive law; and (5) whether the lower tribunal's order raises new and important problems or issues of law of first impression. These factors are general guidelines that serve as a useful starting point for determining whether a discretionary writ of prohibition should issue. Although all five factors need not be satisfied, it is clear that the third factor, the existence of clear error as a matter of law, should be given substantial weight.

First, the DMV has no other adequate means, such as direct appeal, to obtain the desired relief and will be damaged or prejudiced in a way that is not correctable on appeal by the OAH's interpretation of the law regarding granting requests for administrative hearings after the driver has entered a guilty plea in the companion criminal matter. Next, the OAH's granting Mr. Sigley a hearing is clearly erroneous as a matter of law. *See, W. Va. Code §17C-5A-2a* (2010). Further, the OAH's granting a hearing manifests persistent disregard for procedural and substantive law. The OAH's granting of a hearing when Mr. Sigley entered a guilty plea and the DMV revoked upon conviction raises new and important problems or issues of law of first impression. In that regard, immediate relief from the circuit court was necessary to prevent an illegal stay of revocation to



continue and to fulfill the DMV's legislative purpose to "protect the innocent public from irresponsible drunkards." *Shell v. Bechtold*, 175 W. Va. 792, 338 S.E.2d 393 (1985). *See also, Isenhardt v. Vasiliou*, 187 W. Va. 357, 359, 419 S.E.2d 297, 299 (1992).

Moreover, the circuit court was required to address the issues outlined in the *Verified Complaint for Writ of Prohibition* as they are subject to be oft repeated. The DMV issues between 8,000 and 9,000 DUI license revocation orders each year. In every case in which a driver appeals his license revocation to the OAH, a stay of the revocation is entered pursuant to W. Va. Code § 17C-5A-2(a) (2015). Because the OAH is the sole agency to hear administrative appeals of driver license revocations for DUI, the matter will continue to be repeated as other drivers request hearings after pleading guilty to the companion criminal matter.

OAH post-hearing delay has become a prevalent issue in recent appeals to this Court. *See, Reed v. Staffileno*, 239 W. Va. 538, 803 S.E.2d 508 (2017); *Straub v. Reed*, 239 W. Va. 844, 806 S.E.2d 768 (2017); *Reed v. Boley*, 240 W. Va. 512, 813 S.E.2d 754 (2018). Although post-hearing delay by the OAH was not an issue on appeal, during oral argument on January 8, 2019, in *Reed v. Grillot*, No. 17-0691, 2019 WL 1012160 (W. Va. Mar. 4, 2019) (memorandum decision), this Court asked the DMV why the OAH took several years to issue final order. This Court repeated its inquiry on January 15, 2019, in *Reed v. Winesburg*, 241 W. Va. 325, 825 S.E.2d 85 (2019). The continual backlog in the issuance of OAH final orders has become a chronic problem throughout this State and could be assuaged by the OAH entering final orders instead of exceeding its authority and granting administrative hearings to drivers who have pled guilty.

## VI. CONCLUSION

The circuit court committed reversible error by dismissing the matter as premature when the



OAH lacked jurisdiction to schedule an administrative hearing when the DMV revoked Mr. Sigley's driver's license upon conviction and authority to interpret W. Va. Code § 17C-5A-1a(c)(2010). For the reasons outlined above, the DMV respectfully requests that this Court reverse the circuit court order.

Respectfully submitted,

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