North Carolina Criminal Law

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Alcohol Concentration Restrictions on Restored Licenses and the Enforcement of Violations

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When a person is convicted of driving while impaired under G.S. 20-138.1, the person's license is revoked for one year. G.S. 20-17(a)(2); G.S. 20-19(c1). (A person who has one or more prior convictions for an offense involving impaired driving may be subject to a longer period of revocation, depending on when those offenses occurred.) At the conclusion of that one-year revocation period, the person may seek to have his or her license restored by furnishing proof of financial responsibility and by paying a restoration fee of $140.25. G.S. 20-7(c1), (i1). The license then may be restored with a restriction prohibiting the person from operating a vehicle with an alcohol concentration of 0.04 or more at any relevant time after the driving. G.S. 20-19(c3). That restriction, listed on the driver's license as Restriction 19, remains in effect for three years. This post addresses how such a restriction is enforced and the consequences for a substantiated violation.

Agreement to be tested. In addition to the alcohol concentration restriction, for the license to be restored, the person must agree to submit to a chemical analysis under the state's implied consent laws when certain conditions are met. Thus, the person must agree to submit to testing at the request of a law enforcement officer who has reasonable grounds to believe the person is operating a motor vehicle on a highway or public vehicular area (1) while consuming alcohol or (2) at any time while the person has remaining in his or her body any alcohol or controlled substance previously consumed. G.S. 20-19(c3). The person also must agree that upon a law enforcement officer's request, the person will agree to be transported by the law enforcement officer to the place where the chemical analysis will be administered.

Reporting a violation. If the results of an administered chemical analysis establish a violation of the alcohol

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concentration restriction or the person refuses to be transported for testing, a law enforcement officer/chemical analyst must complete an affidavit pursuant to G.S. 20-16.2(c1). G.S. 20-19(c3). The form affidavit used for these purposes is AOC-CVR-1A, the same form affidavit used to support issuance of a civil license revocation under G.S. 20-16.5. The officer must swear to and sign the form before an official authorized to administer oaths (typically a magistrate) and then must immediately mail the form to the Division of Motor Vehicles (DMV).

Refusal to be tested. If the person refuses to be tested, then the law enforcement officer/chemical analyst must note the refusal on the form affidavit, AOC-CVR-1A, and then immediately mail the affidavit to DMV just as the officer would if the person had been charged with an implied consent offense and had willfully refused to submit to a chemical analysis.

DMV notice and hearing for violation of alcohol concentration restriction. When DMV receives a "properly executed" affidavit alleging a violation of the alcohol concentration restriction (either the level or a refusal to be transported for testing), DMV must notify the person that the person's license is revoked for one year — effective 30 days after the order is mailed — unless before that date the person submits a written request for a hearing. G.S. 20-19(c5).

If the person properly requests a hearing, the person retains the person's license, unless it is revoked under some other provision of law, until the hearing is held, the person withdraws the request, or the person fails to appear at a scheduled hearing. G.S. 20-19(c5) provides that the hearing is limited to consideration of whether all of the following conditions exist:

(1) The charging officer had reasonable grounds to believe that the person had violated the alcohol concentration restriction.

(2) The person was notified of the person's rights as required by G.S. 20-16.2(a).

(3) The driver's license of the person had an alcohol concentration restriction.

(4) The person submitted to a chemical analysis upon the request of the charging officer, and the analysis revealed an alcohol concentration in excess of the restriction on the person's driver's license.

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This statutory list of considerations does not account for a person's refusal to be transported for testing. Nevertheless, because agreement to be transported for testing is a requirement of restoration under G.S. 20-19 and because G.S. 20-16.2 requires the submission of an affidavit for violation of a provision of an alcohol concentration restriction *other than violation of the alcohol concentration level*, the refusal to be transported for testing, when alleged, presumably is a proper substitute for consideration 4 listed above.

If the DMV hearing officer finds that the four conditions are met, he or she must sustain the revocation. If the hearing officer concludes that any of the conditions is not met, he or she must rescind the revocation. There is no right of appeal from DMV's decision, but the person may petition the superior court for discretionary review.

DMV notice and hearing for refusal. When DMV receives a properly executed affidavit alleging that the license-holder refused to submit to a chemical analysis, the notice and hearing procedures that apply to other refusal revocations under G.S. 20-16.2 apply. G.S. 20-19(c4). Thus, DMV must expeditiously notify the person that his or her license is revoked for 12 months – effective 30 days after the order is mailed – unless before that date the person submits a written request for a hearing. G.S. 20-16.2(d).

If the person properly requests a hearing, the person retains his or her license, unless it is revoked under some other provision of law, until the hearing is held, the person withdraws the request, or the person fails to appear at a scheduled hearing.

The hearing is limited to consideration of whether:

(1) The person had an alcohol concentration restriction on his or her driver's license pursuant to G.S. 20-19;

(2) A law enforcement officer had reasonable grounds to believe that the person violated the alcohol concentration restriction on his or her driver's license;

(3) The person was notified of the person's implied consent rights; and

(4) The person willfully refused to submit to a chemical analysis.

If the hearing officer finds that these conditions are are met, he or she must sustain the revocation. If he or she finds that any of the conditions is not met, the hearing officer must rescind the revocation. The license holder may appeal to superior court from an order sustaining a revocation for refusal to submit to chemical testing. The superior court's review is limited to whether there is sufficient evidence in the record to support the findings of fact, whether the conclusions of law are supported by the findings of fact, and whether DMV committed an error of law in revoking the license.

The upshot. A substantiated violation of a 0.04 alcohol concentration restriction – Restriction 19 — on a person's restored driver's license will result in a one-year revocation of the person's driver's license.

Is violating an alcohol concentration restriction on a license a crime? Though G.S. 20-19 does not define a criminal charge resulting from its violation, violating such a restriction runs afoul of G.S. 20-7(e).

That latter provision makes it unlawful for the holder of a restricted license to operate a motor vehicle without complying with the restriction. Violation of G.S. 20-7(e) is a Class 3 misdemeanor. G.S. 20-35(a1)(2).

Interplay with ignition interlock restriction. In addition to an alcohol restriction, first-time DWI offenders whose licenses are restored following a one-year revocation are required to have ignition interlock if their alcohol concentration was a 0.15 or more. A different process applies to the reporting of violations by ignition interlock vendors and the imposition of penalties for noncompliance. I'll save that topic for a future post.

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