

01-714-CU
ROBBIE TUBBS -vs- COMMONWEALTH OF PENNSYLVANIA, DEPT. OF
TRANSPORTATION, BUREAU OF DRIVER LICENSING

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION - LAW

ROBBIE TUBBS

Petitioner

vs.

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF TRANSPORTATION
BUREAU OF DRIVER LICENSING
Respondent

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No. 01-714 -CD

PETITION TO SET ASIDE ORDER OF
THE DEPARTMENT OF TRANSPORTATION
WHICH SUSPENDED PETITIONER'S
OPERATING PRIVILEGE and PETITION
TO OBTAIN A JUDICIAL ORDER
PERMITTING PETITIONER TO
CONTINUE DRIVING

Code: Civil

Filed on behalf of:
Plaintiff

ROBBIE TUBBS

FILED

MAY 14 2001

William A. Shaw
Prothonotary

Counsel of Record for this
party:

TIMOTHY E. DURANT, ESQ.
Pa. I. D. No. 21352
201 North Second Street
Clearfield, PA 16830
(814) 765-1711

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION - LAW

ROBBIE TUBBS

Petitioner

vs.

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No. 01-

- CD

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF TRANSPORTATION
BUREAU OF DRIVER LICENSING
Respondent

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PETITION TO SET ASIDE ORDER OF THE DEPARTMENT OF TRANSPORTATION
WHICH SUSPENDED PETITIONER'S OPERATING PRIVILEGE and TO OBTAIN
A JUDICIAL ORDER PERMITTING PETITIONER TO CONTINUE DRIVING

Petitioner ROBBIE TUBBS, by the undersigned counsel, respectfully petitions the Court pursuant to 75 Pa. Cons. Stat. Ann. §1550 for review of an order of the Department of Transportation suspending petitioner's operating privilege and in support thereof represents as follows:

1. Petitioner Robbie Tubbs is an adult individual residing at R.D. #2 Box 330J, Curwensville, Clearfield County, Pennsylvania 16833.

2. Petitioner currently possesses a valid driver's license #21700924, issued to him on August 24, 2000, which has not heretofore been suspended, cancelled, or revoked.

3. By letter dated April 19, 2001, petitioner was notified in writing the Department of Transportation was suspending his driving privileges for the following reasons as set forth in the notice: Seizure Disorder condition. A copy of the notice is

incorporated herein and attached as Exhibit "A."

4. The suspension is improper and unlawful for the following reasons:

A. Petitioner is entitled to a hearing prior to the suspension of his license.

B. Petitioner had a seizure in the early morning hours of March 24, 2001 not while he was driving a motor vehicle but while he was sleeping.

C. Petitioner's seizure was his first in almost five years and was the result of having run out of the medication (Dilantin) prior to the week-end when he returned home. Petitioner was prescribed the Dilantin for precautionary purposes upon having his first seizure in 1996 and believed that since he had never had another seizure from that time he could wait until his next physician's appointment to get his prescription refilled. Petitioner now knows that his failure to get a refill so he could continue the Dilantin regimen and take his medication (without interruption) was a mistake on his part and it will not be repeated.

D. Petitioner's treating physician, Kornel Lukacs, M.D. a Neurologist with offices at 1915 Valley View Boulevard, Altoona, PA 16602 finds that petitioner is a compliant person and medically competent to drive and that his seizure condition is under control by the use of medication.

E. Petitioner lives in a rural area of Clearfield County needs his driver's license to work and to meet his daily needs.

5. Now that petitioner knows without a doubt that the medication is needed to remain seizure free he will not permit any lapses in the taking of his medication.

6. Petitioner's treating physician (Kornel Lukacs, M.D.) provides a report of March 26, 2001 wherein he states as to petitioner, "In other words he had no intent to be non-compliant but he hasn't had a seizure for 5 years. and further ... we've never had any problem with his medication taking and he has been seizure free on the medication." A copy of the report of March 26, 2001 from Dr. Lukacs is attached hereto and incorporated herein as Exhibit "B".

7. Petitioner believes and therefore avers that at present he can safely operate a motor vehicle and there remains no medical need, advisability or necessity to refrain from driving.

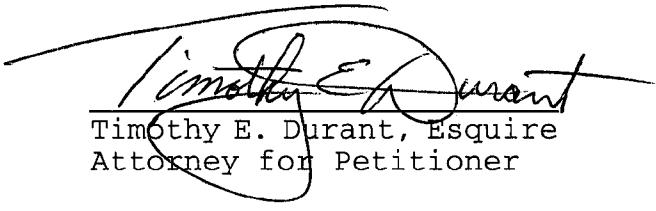
8. The Suspension Notice from the Department of Transportation specifically states that he must turn in his license on or before May 21, 2001 unless petitioner appears in person before a judge prior to that date and receives an order permitting him to continue driving.

9. Petitioner desires to continue driving and therefore makes himself available to appear before this honorable court any time during the week of May 14, 2001 for the purpose of obtaining the order referred to in paragraph 5 above.

WHEREFORE, petitioner respectfully requests that the Court issue an order permitting him to continue driving and set this matter down forthwith for de novo hearing pursuant to 75 Pa. Cons. Stat. Ann. §1550 and that the order of the Department of Transpor-

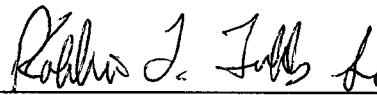
tation be set aside pending said hearing.

May 11, 2001


Timothy E. Durant, Esquire
Attorney for Petitioner

VERIFICATION

Petitioner, **ROBBIE TUBBS**, verifies that the statements made in this Petition are true and correct. Petitioner understands that false statements herein are made subject to the penalties of 18 Pa. C.S. §4904, relating to unsworn falsification to authorities.



Robbie Tubbs

Dated: May 8, 2001

recalsrz

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF TRANSPORTATION
Bureau of Driver Licensing
Mail Date: April 19, 2001

ROBBIE TUBBS
RD #2 BOX 330J
CURWENSVILLE PA 16833

Dear Mr. ROBBIE TUBBS:

We have received medical information indicating that you have a Seizure Disorder condition which prevents you from safely operating a motor vehicle.

As of 05/24/2001, you may no longer drive. Your driving privilege is hereby recalled indefinitely as mandated by Section 1519(c) of the Vehicle Code.

This decision has been made by comparing your medical condition with the standards recommended by our Medical Advisory Board and adopted by this Department. This action will remain in effect until we receive medical information that your condition has improved and you are able to safely operate a motor vehicle.

Since you have a seizure disorder, you must remain seizure free for a six month period, with or without medication, before you will be eligible for reinstatement of your driving privilege. Our records indicate that your seizure occurred on 3/24/01.

In order to comply with this action, you must return all current Pennsylvania driver's licenses, learner's permits, temporary driver's licenses (camera cards) in your possession, on or before the effective date listed above. If you cannot comply with the requirements stated above, a sworn affidavit stating that you are aware of the sanction against your driving privilege must be submitted. When the Department receives your license or affidavit, we will send you a receipt.

YOU MAY NOT RETAIN YOUR DRIVER'S LICENSE FOR IDENTIFICATION PURPOSES. However, you may apply for and obtain a photo identification card at any Driver License Center. You must present two (2) forms of proper identification (e.g., birth certificate, valid U.S. passport, marriage certificate, etc.) in order to obtain your photo identification card.

 You have the right to appeal to the Court of Common Pleas (Civil Division) within thirty (30) days of the mail date of this notice. If you file an appeal in the County Court, the Court will give you a time-stamped certified copy of the appeal. In order for your appeal to be valid, you must send this time-stamped certified copy of the appeal by certified mail to:

EXHIBIT "A" Pg. 1 of 2

Pennsylvania Department of Transportation
Office of Chief Counsel
Third Floor, Riverfront Office Center
Harrisburg, PA 17104

You still must send in your license before the effective date of recall unless you appear in person before a judge and receive an order permitting you to continue driving.

If you have any questions or need further information, please contact the Medical Unit, P.O. Box 68682, Harrisburg, PA 17106-8682 or call (717) 787-9662 between the hours of 8:00 a.m. and 4:30 p.m.

Sincerely,

Rebecca L. Bickley

Rebecca L. Bickley, Director
Bureau of Driver Licensing

Driver License #: 21700924

EXHIBIT "A" Pg. 2 of 2

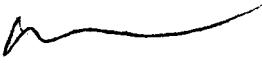
PATIENT: Robbie Tubbs
DATE SEEN: March 26, 2001

The patient wanted to come back earlier because according to the patient and a family member, last Saturday, two days ago, he had a seizure at night. He ran out of the medication. He wanted to call but he figured that he's just get it when he had his next appointment. In other words, he had no intention to be non-compliant but he hasn't had a seizure for 5 years. That episode was a general grand mal with tongue biting. He denied any previous episodes, any staring episodes, any loss or impairment of consciousness.

He's been taking 430 mg. of Dilantin which has been working well and he's had no side effects. He's never had a seizure on that medication.

The patient had a negative examination today. The blood pressure was 134/76. He had no nystagmus. Finger-nose-finger testing was okay.

It was explained that the state law states that there should be no driving until seizure free for 6 months. However, he's felt to be low risk as long as he takes his medication. He's compliant person, he just ran out of the medication and he figured that since he's been seizure free for 5 years, he would wait for his next appointment. He knows now that he shouldn't run out of the medication. Actually we know that he needs the medication; without the medication, he would have seizures. In other words, the patient will take the medication from now on indefinitely or at least for a long period of time. I explained the state law and an appropriate report is being sent to the Department of Transportation. They can make a decision regarding his license. His EEG will be done in a short period of time. I will reassess his blood level to make sure that he's taking adequate doses of medication but we've never had any problem with his medication taking and he has been seizure free on the medication. A detailed discussion was carried out. He will be seen in 4 weeks.


Kornel Lukacs, M.D.

KL/ji

D: 03/26/01
T: 03/27/01

EXHIBIT "B" Pg. 1 of 1

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5/20/01

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MAY 14 2001
JOA: jas/acty
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William A. Shaw
Prothonotary
PD \$80.00

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IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION - LAW

ROBBIE TUBBS

Petitioner

vs.

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No. 01- 714 -CD

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COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF TRANSPORTATION
BUREAU OF DRIVER LICENSING
Respondent

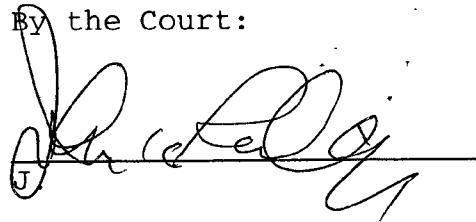
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ORDER PERMITTING DRIVING TO CONTINUE

AND NOW, this 22 day of May 2001, upon consideration of the petition of Robbie Tubbs for review of an order of the Department of Transportation suspending petitioner's operating privilege due to his having suffered a seizure and Petitioner having appeared before me and presented me with evidence from Neurologist Kornel Lukacs, M.D. that his condition is controlled by medication it is the order of this court that Petitioner shall be permitted to continue driving until further order of this court or any other court of competent jurisdiction. Hearing will be held in due course pursuant to 75 P.C.S.A. §1550 to determine whether the action of the Department of Transportation in suspending petitioner's operating privilege should be set aside.

The petitioner is directed forthwith to serve a certified copy of this Order Permitting Driving to Continue on the Department of Transportation at the address shown in the department's notice, by certified mail, return receipt requested.

By the Court:



FILED

MAY 22 2001

William A. Shaw
Prothonotary

FILED

MAY 22 2001

05/22/01

William A. Shaw
Prothonotary

2 cc to *ellie*
frey

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION - LAW

ROBBIE TUBBS

Petitioner

vs.

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* No. 01- 714 -CD

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF TRANSPORTATION
BUREAU OF DRIVER LICENSING
Respondent

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ORDER FOR HEARING

AND NOW, this 22 day of May 2001, upon consideration of the petition of Robbie Tubbs for review of the order of the Department of Transportation suspending petitioner's operating privilege, a hearing de novo is granted to determine whether the action of the Department of Transportation in suspending petitioner's operating privilege should be set aside.

Hearing on the above captioned matter will be held on the ~~22~~^{24th} day of June, 2001 at 10:30 A.M. in Courtroom Number L in the Clearfield County Court House, Clearfield, Pennsylvania.

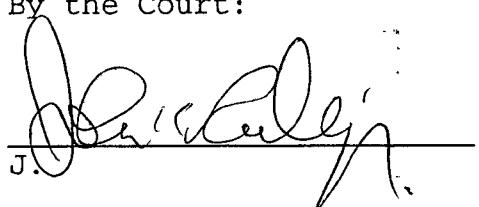
The petitioner is directed forthwith to serve a notice of the appeal and copies of the petition for review and order for hearing on the Department of Transportation at the address shown in the department's notice (Pennsylvania Department of Transportation, Office of Chief Counsel, Third Floor, Riverfront Office Center, Harrisburg, PA 17104) by certified mail, return receipt requested.

By the Court:

FILED

MAY 22 2001

William A. Shaw
Prothonotary



FILED

MAY 22 2001

05/22/01

William A. Shaw
Prothonotary

2 cc to *att*

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01-714-CD

AFFIDAVIT OF COMPLIANCE

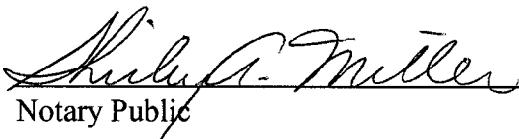
I, Robbie Tubbs, of RD #2, Box 330 J, Curwensville, Pennsylvania, with driver's license No. 21700924, do hereby swear and affirm that I will faithfully take all medications as prescribed for me for the purposes of preventing any seizure.

I make this Affidavit for the purpose of obtaining permission from the Court of Common Pleas to permit me to continue to drive until an appeal hearing can be held on the Petition to Set Aside Order of the Department of Transportation which suspended my license due to a seizure which I suffered on March 24, 2001.



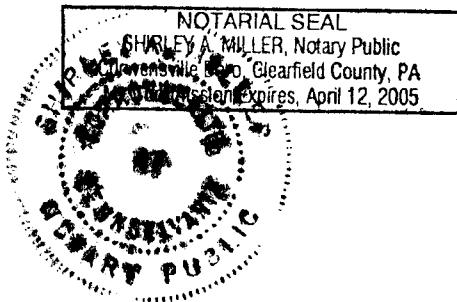
Robbie Tubbs

Sworn to and Subscribed
before me this 21st day
of May, 2001.



Notary Public

My Commission Expires: April 12, 2005



FILED

MAY 22 2001

William A. Shaw
Prothonotary

FILED

MAY 22 2001

3:52

William A. Shaw

Prothonotary

2 cc & a/c

E/K



KORNEL LUKACS, M.D.
NEUROLOGY AND MUSCLE DISEASES1915 Valley View Blvd.
Altoona, PA 16602
(814) 944-3347

May 22, 2001

The Honorable John K. Reilly, Jr.
President Judge
Clearfield County Courthouse
230 East Market Street
Clearfield PA 16830

Re: Robbie Tubbs, Clearfield County
No. 01-714-CD

Dear Judge Reilly,

This is to advise your Honorable Court that I am Mr. Robbie Tubbs' physician and he has been known to me for five years. He was most recently seen by me on May 10, 2001 and I believe my report of May 13, 2001 has been submitted to your Court previous to this letter.

Based upon my knowledge of Mr. Tubbs and his medical condition, I can state that in my professional opinion based upon present circumstances within a reasonable degree of medical certainty, that so long as Mr. Tubbs continues to take his Dilantin as prescribed, he will not suffer from any further seizures.

I believe Mr. Tubbs to be a mature, reasonable person and I know he now understands the importance of regular medication as prescribed. Recent events have made this very clear to him. I do not personally have any objections to his continuing to drive under present circumstances.

Very Truly yours,


Kornel Lukacs, M.D.

FILED

MAY 22 2001

William A. Shaw
Prothonotary

FILED

MAY 22 2001

0/3:2 p.m.

William A. Shaw

Prothonotary

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MAY 22 2001

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION - LAW

ROBBIE TUBBS

Petitioner

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vs.

No. 01-714-CD

**COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF TRANSPORTATION
BUREAU OF DRIVER LICENSING**

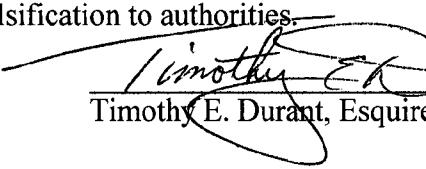
Respondent

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CERTIFICATE OF SERVICE

I, TIMOTHY E. DURANT, ESQUIRE, verify that on May 23, 2001, I did deposit in the United States First Class Mail a "Petition to Set Aside Order of the Department of Transportation Which Suspended Petitioner's Operating Privilege and Petition to Obtain a Judicial Order Permitting Petitioner to Continue Driving", a copy of a report received from Kornel Lukacs, M.D., pertaining to his May 10, 2001 evaluation of Robbie Tubbs, Affidavit of Compliance, and a copy of a letter forwarding same to Honorable John K. Reilly, Jr., a copy of an order setting hearing and a copy of an order permitting driving to continue. The said Petition and other documents were sent to the Pennsylvania Department of Transportation, Office of Chief Counsel, at its last known address which is Third Floor, Riverfront Office Center, Harrisburg, PA 17104, by certified mail, return receipt requested, bearing No. 7000 0520 0021 4260 2102. Apparently the receipt for same was lost in the mail, but a copy of said receipt has been provided by the United States Postal Service showing these documents were delivered on May 24, 2001 and were signed for by a Robert C. Bellon. The copy of the said receipt is attached hereto.

I understand that false statements herein are made subject to the penalties of 18 Pa.C.S. §4904, relating to unsworn falsification to authorities.


Timothy E. Durant, Esquire

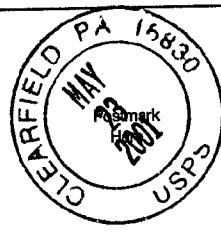
FILED

JUN 12 2001

Dated: June 12, 2001

William A. Shaw
Prothonotary

U.S. Postal Service
CERTIFIED MAIL RECEIPT
(Domestic Mail Only; No Insurance Coverage Provided)

| | | | | | | | | | | | | | | | |
|--|---------|------|------|------|------|---------|---------|---------------|------|--|------|---|--|----------------------|---------|
| 2115 | 4260 | 0021 | 0520 | 0000 | 2000 | | | | | | | | | | |
| <input type="text"/> | | | | | | | | | | | | | | | |
| <table border="1"><tr><td>Postage</td><td>\$. 97</td></tr><tr><td>Certified Fee</td><td>1.90</td></tr><tr><td>Return Receipt Fee (Endorsement Required)</td><td>1.50</td></tr><tr><td>Restricted Delivery Fee (Endorsement Required)</td><td></td></tr><tr><td>Total Postage & Fees</td><td>\$ 4.37</td></tr></table> | | | | | | Postage | \$. 97 | Certified Fee | 1.90 | Return Receipt Fee (Endorsement Required) | 1.50 | Restricted Delivery Fee (Endorsement Required) | | Total Postage & Fees | \$ 4.37 |
| Postage | \$. 97 | | | | | | | | | | | | | | |
| Certified Fee | 1.90 | | | | | | | | | | | | | | |
| Return Receipt Fee (Endorsement Required) | 1.50 | | | | | | | | | | | | | | |
| Restricted Delivery Fee (Endorsement Required) | | | | | | | | | | | | | | | |
| Total Postage & Fees | \$ 4.37 | | | | | | | | | | | | | | |
|  | | | | | | | | | | | | | | | |
| <p>Recipient's Name (Please Print Clearly) (To be completed by maller) PA DEPT OF TRANSPORTATION OFFICE OF CHIEF ENGINEER Street, Apt. No.; or PO Box No. Third Floor, Riverfront Office Center City, State, ZIP+4 HARRISBURG PA 17104</p> | | | | | | | | | | | | | | | |
| <p>PS Form 3800, February 2000 See Reverse for Instructions</p> | | | | | | | | | | | | | | | |



Track/Confirm - Intranet Item Inquiry - Domestic

Item: 7000 0520 0021 4260 2110

| | | | |
|-------------|------------|------------------|-----------|
| Destination | Zip: 17101 | City: HARRISBURG | State: PA |
| Origin | Zip: | City: | State: |

| Event | Date | Time | Location |
|---|------------|-------|---------------------|
| DELIVERED | 05/24/2001 | 06:48 | HARRISBURG PA 17101 |
| Firm Name: 24 CHIEF COUNSEL | | | |
| Recipient : 'R BELLON' | | | |
| Request Delivery Record | | | |
| View Delivery Signature and Address | | | |
| ARRIVAL AT UNIT 05/24/2001 03:42 HARRISBURG PA 17107 | | | |

Enter Request Type and Item Number:

 Quick Search Extensive Search[Explanation of Quick and Extensive Searches](#)

Item Number:

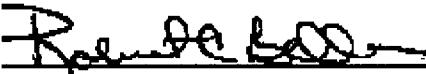
Inquire on multiple items.Go to the Product Tracking System Home Page.



Track/Confirm - Intranet Item Inquiry

Item Number: 7000 0620 0021 4260 2119

This item was delivered on 05/24/2001 at 06:48.

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| Delivery Section | |
| Signature: |   |
| Address: |  graphic address retrieved from database |

Enter Request Type and Item Number:

Quick Search Extensive Search

[Explanation of Quick and Extensive Searches](#)

Item Number:

Inquire on multiple items.

Go to the Product Tracking System Home Page.



Track/Confirm - Intranet Item Inquiry

Item Number: 7600 0520 0021 4200 2113

This item was delivered on 05/24/2001 at 06:48.

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| Signature: |  graphic signature retrieved from database |
| Address: | 1425 CROKED HILL RD MURFREESBORO TN 37130-1000 |

Enter Request Type and Item Number:

Quick Search Extensive Search

[Explanation of Quick and Extensive Searches](#)

Item Number:

[Inquire on multiple items.](#)

[Go to the Product Tracking System Home Page.](#)

FILED

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William A. Shaw
Prothonotary
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IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

COMMONWEALTH OF PENNSYLVANIA : :

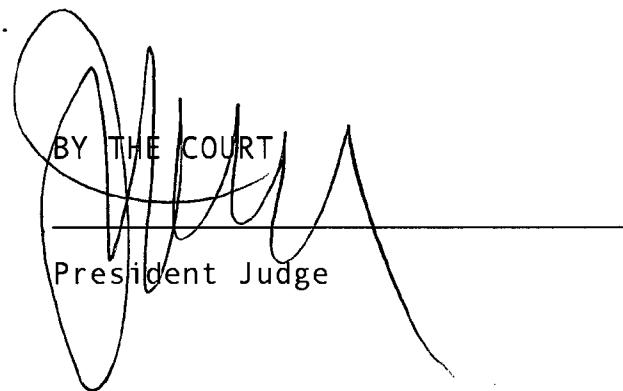
VS : NO. 01-714-CD
ROBBIE TUBBS : :

O R D E R

NOW, this 26th day of June, 2001, the Court hereby enters an Order continuing this hearing on appeal of license of suspension, to be held after September 24th, 2001, and maintain the supersedeas in full force and effect until disposition of this matter.

It is the further Order of this Court that the Appellant take his prescribed medication in accordance with his doctor's instructions.

BY THE COURT
President Judge



FILED

JUN 26 2001

William A. Shaw
Prothonotary

FILED

JUN 2 6 2001
O/223/2C, city, Plaintiff
William A. Shaw
Prothonotary *ER*
1cc city, Kurn
Kern

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

COMMONWEALTH OF PENNSYLVANIA : :

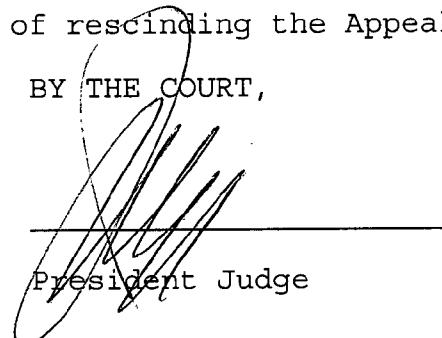
VS. : NO. 01-714-CD

ROBBIE TUBBS : License Suspension Appeal

O R D E R

NOW, this 10th day of December, 2003, this being the day and date set for hearing into the above-captioned Appeal from License Suspension; following agreement thereof, it is the ORDER of this Court that said Appeal be and is hereby remanded to the Department for the purpose of rescinding the Appeal.

BY THE COURT,


President Judge

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JAN 02 2004

62
William A. Shaw
Prothonotary

FILED

cc to Atty Dewart
D 11:47 AM 2/22/2004
cc to Doye K. K. 2004
cc to Doye K. K. 2004
cc to Doye K. K. 2004
cc to Doye K. K. 2004

JAN 02 2004

GRK

William A. Shaw
Prothonotary