

Office of Adjudications

IN THE MATTER OF : ***SUSPENSION OF SAFE BOATING
CERTIFICATE
DEEP # 19-003***

ROBERT PATT : ***AUGUST 7, 2019***

FINAL DECISION

A hearing was held on July 31, 2019, at the Department of Energy and Environmental Protection (DEEP/Department) Marine District Headquarters in Old Lyme regarding the suspension of the Safe Boating Certificate of Robert Patt. General Statutes §15-140q. Present were: Gregg Wagman, attorney for Mr. Patt, Timothy Delgado of the DEEP Boating Division, and Officer Lucas DelGrosso of the New London Police Department, who testified on behalf of the Department.

The following exhibits or documents were entered into the record:

DEEP-1 – New London Police Department Incident Report with attachments.

Copy of Section E of Officer's BUI Arrest and Alcohol Test (Refusal or Failure Report)

FINDINGS OF FACT

After a probable cause hearing limited to those factors set forth in General Statutes § 15-140q, I find the following facts from the evidence admitted (DEEP-1) and the testimony of Officer DelGrosso.

1. Mr. Patt's vessel was stopped for a routine boating safety check by Coast Guard Officer Jeffrey Wilkerson on June 14, 2019. General Statutes § 15-154(b) (2). After the boat was stopped, Officer Wilkerson observed that the behavior and appearance of Mr. Patt, the only occupant of the vessel, indicated possible impairment. Mr. Patt also admitted to the Officer that he had been drinking.
2. Mr. Patt was taken to the Coast Guard Pier where New London Police Officer Lucas DelGrosso, who had been called to assist Officer Wilkerson, administered the following field sobriety tests: horizontal gaze nystagmus; walk and turn; and one leg stand. Mr. Patt was unable to perform any of these tests to standard, all indicators of the consumption of intoxicating liquor.
3. Due to Officer Wilkerson's observations of Mr. Patt in his stopped vessel, Officer DelGrosso's observation of Patt's bloodshot and glassy eyes, the odor of alcoholic beverages emitting from his breath, Patt's admission of drinking alcoholic beverages and Patt's inability to perform the Standard Field Sobriety Tests to standard, Patt was taken to the New London Police Headquarters.
4. At the New London Police Department, Mr. Patt was apprised of his constitutional rights and read an implied consent advisory. Patt called his attorney. Officer DelGrosso did not read the advisory

language in the form used for boating cases; instead, he read Mr. Patt the Implied Consent Advisory from the form used for driving while intoxicated arrests. The language read to Mr. Patt included notice that testing was required and that the result of refusal would be the revocation of a license. Mr. Patt had no questions regarding the Advisory he was read.

5. Mr. Patt was asked several times throughout his processing if he would submit to a urine test and he refused to provide an answer. His refusal was witnessed by two officers. As the New London testing equipment (“drager”) was not functioning, Mr. Patt’s refusal was documented at the Waterford Police Department.

CONCLUSIONS OF LAW

To suspend Mr. Patt’s safe boating certificate pursuant to General Statutes § 15-140q, I must determine: (1) whether the officer had probable cause to arrest Mr. Patt for operating a vessel while under the influence of intoxicating liquor or drugs, or both, or while having an elevated blood alcohol content; (2) whether Mr. Patt was placed under arrest; (3) whether Mr. Patt (A) refused to submit to a blood, breath, or urine test or analysis at the request of the peace officer, or (B) submitted to such test or analysis, and the results of such test or analysis indicated that at the time of the alleged offense there was an elevated blood alcohol content; and (4) whether Mr. Patt was operating the vessel. §15-140q (g). If I find in the affirmative on each of these four questions, I must suspend Mr. Patt’s certificate.

It is undisputed that: 1) there was probable cause to arrest Mr. Patt for operating a vessel while under the influence of intoxicating liquor or drugs or both; 2) Mr. Patt was placed under arrest; 3) Mr. Patt refused to submit to a urine test at the request of the police; and 4) Mr. Patt was operating the vessel.

Mr. Patt’s attorney does not challenge any of these findings. He argues that Mr. Patt was not properly notified regarding his implied consent, particularly as to the consequences of his refusal to submit to testing.

There is no evidence that Mr. Patt was informed that his safe boating certificate could be suspended. In fact, Officer DelGrosso admitted he used the incorrect advisory language. I acknowledge that General Statutes §15-140(q) (b) requires the arresting officer to give specific notice that a test failure or refusal will impact someone’s safe boating certificate and that it is possible that Mr. Patt did not understand that his boating certificate could be suspended if he refused to submit to testing. However, §15-140q (g) specifically limits the inquiry for this proceeding to the four factors outlined above. Whether effective notice was given to Mr. Patt is not among the four statutorily-enumerated factors.

In proceedings on driving under the influence, the legislature made the license suspension process an administrative matter and expressly limited the hearing on a license suspension to four enumerated factors. General Statutes §14-227b (g). Like that license suspension process, the hearing in the process for suspension of a safe boating certificate is limited to the four enumerated factors of §15-140q (g). The Supreme Court of Connecticut has consistently upheld this limited inquiry in a suspension hearing. *Volck v. Muzio*, 204 Conn. 507, 512 (1987). Notably, in *Buckley v. Muzio*, 200 Conn 1 (1986), the Court specifically found that where a hearing was limited to enumerated factors, it was not necessary to find that a motorist understood the

consequences of a refusal to submit to testing before suspending a license. Consequently, I base my decision to suspend Mr. Patt's safe boating certificate on my affirmative findings on the four factors of §15-140q (g).

It is uncontested that Mr. Patt was operating a vessel on June 14, 2019, when he was stopped for a routine safety inspection. It is also acknowledged that there was probable cause to subject Mr. Patt to field sobriety tests, which he failed to perform to standard. It is also not in dispute that Mr. Patt was arrested and subsequently did not submit to a urine test after being asked to do so several times by police.

Having found in the affirmative on the four factors enumerated in General Statutes §15-140q (g), and, pursuant to the authority delegated to me by the Commissioner of Energy and Environmental Protection, §22a-2, I find that the safe boating certificated of Robert Patt should be suspended.

ORDER

The safe boating certificate of Robert Patt is hereby suspended for a period of not more than *six (6) months, effective August 7, 2019 through February 7, 2020*. **Mr. Patt is hereby ordered to surrender his Connecticut 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 as a final order of the Commissioner of Energy and Environmental Protection by:


Janice Deshais, Hearing Officer

PARTY LIST

Final Decision in the matter of Robert Patt, DEEP #19-003
(Suspension of Safe Boating Certificate)

PARTY

Robert Patt
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DEEP Boating Division
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(Via electronic mail)

REPRESENTED BY

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