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Minn. Stat. § 480A.08, subd. 3 (2018).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-1074**

Kari A. Patnode, petitioner,
Appellant,

vs.

Commissioner of Public Safety,
Respondent.

**Filed April 1, 2019
Affirmed
Reilly, Judge**

Hennepin County District Court
File No. 27-CV-17-19383

Peter J. Timmons, Mendota Heights, Minnesota (for appellant)

Keith Ellison, Attorney General, William Young, Assistant Attorney General, St. Paul,
Minnesota (for respondent)

Considered and decided by Reilly, Presiding Judge; Rodenberg, Judge; and
Bratvold, Judge.

UNPUBLISHED OPINION

REILLY, Judge

In this appeal from the district court's order sustaining revocation of appellant's driving privileges, appellant argues that she was not properly advised of her rights under the implied-consent statute. We affirm.

FACTS

Appellant Kari A. Patnode was placed under arrest in November 2017 for impaired driving and was transported to the Hennepin County jail. At the jail, the arresting police officer informed appellant that she was under arrest for a suspected violation of the impaired-driving laws and read her the breath-test advisory as it appeared on the e-charging website.¹ The officer told appellant that refusal to take a test was a crime and advised her of her right to contact an attorney. Appellant stated that she understood the advisory and did not want to consult with an attorney. Appellant agreed to submit to a breath test, which revealed an alcohol concentration above the legal limit. Appellant's driving privileges were revoked as a result of the breath test. Appellant challenged the revocation of her driving privileges under Minnesota's implied-consent law, arguing that the breath-test advisory did not comply with the statutory requirements of Minnesota law. The district court rejected appellant's argument and sustained the revocation of her driving privileges. This appeal follows.

DECISION

Appellant challenges the district court's order sustaining the revocation of her driver's license on the ground that the breath-test advisory did not comport with the requirements of the implied-consent statute. We review questions of statutory interpretation de novo. *Gray v. Comm'r of Pub. Safety*, 918 N.W.2d 220, 223 (Minn. App. 2018). Whether an advisory violates a driver's due-process rights also presents a question

¹ The implied-consent advisory is now called a "breath test advisory." Minn. Stat. § 169A.51, subd. 2 (2018).

of law that we review de novo. *Fedziuk v. Comm’r of Pub. Safety*, 696 N.W.2d 340, 344 (Minn. 2005).

Anyone who drives a motor vehicle in the State of Minnesota consents to a chemical test of that person’s breath for the purpose of determining the presence of alcohol when certain conditions are met. Minn. Stat. § 169A.51, subd. 1(a) (2018); *State v. Brooks*, 838 N.W.2d 563, 569 (Minn. 2013). The breath-test advisory provides that:

At the time a breath test is requested, the person must be informed:

(1) that Minnesota law requires the person to take a test:

(i) to determine if the person is under the influence of alcohol;
and

(ii) if the motor vehicle was a commercial motor vehicle, to
determine the presence of alcohol;

(2) that refusal to submit to a breath test is a crime; and

(3) that the person has the right to consult with an attorney, but
that this right is limited to the extent that it cannot unreasonably
delay administration of the test.

Minn. Stat. § 169A.51, subd. 2. At a judicial review hearing of a license revocation, the court may consider whether the police officer, at the time of the request for the test, “inform[ed] the person of the person’s rights and the consequences of taking or refusing the test as required by section 169A.51, subdivision 2.” Minn. Stat. § 169A.53, subd. 3(b)(6) (2018).

Appellant argues that the breath-test advisory she received violated her due process rights because the police officer read an improper advisory. The police officer advised appellant that he was testing for the “presence of alcohol,” rather than to determine whether

she was “under the influence of alcohol.” The breath-test advisory requires a police officer to inform a driver that the officer is testing to see if “the person is under the influence of alcohol” and, if the person is driving a commercial motor vehicle, to “determine the presence of alcohol.” Minn. Stat. § 169A.51, subd. 2(1)(i)-(ii). Appellant was not driving a commercial motor vehicle when she was arrested for impaired driving.

“[D]ue process does not permit those who are perceived to speak for the state to mislead individuals as to either their legal obligations or the penalties they might face should they fail to satisfy those obligations.” *McDonnell v. Comm’r of Pub. Safety*, 473 N.W.2d 848, 854 (Minn. 1991). As such, “[u]niformity in giving the implied consent advisory is highly encouraged,” and caselaw recommends that “police officers read the exact words of the statute in order to avoid any possibility of confusion or improper deviation from the statute.” *Hallock v. Comm’r of Pub. Safety*, 372 N.W.2d 82, 83 (Minn. App. 1985). Nevertheless, we will affirm a license revocation if the officer’s deviation from the statutory language does not contain “an incorrect statement of the Minnesota law” and is not “so confusing as to render the advisory illegal.” *Id.* (finding no prejudice where officer added an extra statement to advisory) (citing *Holtz v. Comm’r of Pub. Safety*, 340 N.W.2d 363, 365-66 (Minn. App. 1983) (“While the preferred practice would be to read the form in its entirety, failure to [read the form in full] . . . did not violate appellant’s statutory rights.”)).

Here, appellant does not contend that she was confused or otherwise misled by referring to testing for the presence of alcohol. And “[d]ue process does not require that the advisory explain every potentially unclear application of the law.” *Catlin v. Comm’r*

of Pub. Safety, 490 N.W.2d 445, 447 (Minn. App. 1992). Here, the officer read the breath-test advisory to appellant as it appeared on the e-charging website and the breath-test advisory form. The officer informed appellant that Minnesota law required her to take a test to determine the presence of alcohol, that refusal to take a test is a crime, and that she had the right to consult an attorney before testing. The police officer's instructions did not confuse or mislead the driver, did not misstate the law or misrepresent her rights and obligations.

For these reasons, we conclude that the police officer did not provide an incorrect statement of the law to appellant or impart information so confusing as to render the advisory illegal. Under the breath-test advisory, an officer must inform a driver that Minnesota law requires the person to take a test, that refusal to submit to a breath test is a crime, and that the person has the right to consult with an attorney. Minn. Stat. § 169A.51, subd. 2. The record reflects that the officer informed appellant of each of these rights and consequences. As such, the district court did not err in determining that the advisory read to appellant complied with the statute.

Appellant also argues that the officer misstated the law by advising her that “refusal to take a test” is a crime under Minnesota law, without specifying that he meant a *breath* test, as opposed to *any* test. This argument is not persuasive. The officer only offered appellant the option of taking a breath test, and his statement that “refusal to take a test” was accurate, given the context of the instructions as a whole.

In sum, because the officer accurately informed the driver of her rights and the legal consequences of refusing to submit to a breath test, she is not entitled to rescission of her driver's license revocation.

Affirmed.