

**OFFICE OF ADJUDICATIONS**

**IN THE MATTER OF** : **BOATING DIVISION/  
SUSPENSION OF SAFE  
BOATING CERTIFICATE  
DEP REFERENCE NO. 07-012**

**NICHOLAS G. KAPILOTIS** : **OCTOBER 16, 2007**

*Corrected*  
**FINAL DECISION**

A hearing was held on October 3, 2007, at the Department of Environmental Protection (DEP) Marine Headquarters in Old Lyme regarding the suspension of the above-named operator's safe boating certificate. General Statutes §15-140q. In attendance at the hearing were Paul F. Chinigo, acting as attorney for Mr. Nicholas G. Kapilotis, Mr. Kapilotis, Stephen Silvidio, Officer Matthew Gallante of the New London Police Department, and Petty Officers Gambrell and Phillips of the United States Coast Guard. Kathryn Keenan of the DEP Boating Division and Janice Deshais of the DEP Office of Adjudications were also present to observe the proceedings.

The following exhibits were admitted into evidence:

- a) DEP-1 – Narrative Incident Report dated September 3, 2007 with attachments.
- b) DEP-2 – United States Coast Guard Boarding Report dated September 3, 2007
- c) DEP-3 – Chemical Alcohol Test Report dated September 2, 2007
- d) DEP-4 – BUI 24-Hour License Revocation and Interim Certificate
- e) DEP-5 – Photocopy of Dispatch Log from New London Police Department

Mr. Kapilotis was arrested on ~~July 8, 2007~~ September 2, 2007. General Statutes §15-133(d). A Notice of Suspension was mailed to Mr. Kapilotis on September 6, 2007, advising of his right to a hearing prior to the effective date of the suspension to determine probable cause for said suspension. The Notice of Hearing to be held on September 28, 2007 was issued to Mr. Kapilotis on September 14, 2007. An amended notice of hearing was sent on September 17, 2007. Due to scheduling conflicts, the hearing was continued to October 3, 2007.

**FINDINGS OF FACT**

1. On September 2, 2007, a United States Coast Guard vessel approached a vessel (identified as CT3981AH) at the mouth of the Thames River off of New London to check if it was in distress. Mr. Kapilotis was on board the vessel and observed

to be at the controls of the vessel by Petty Officer Daniel Gambrell (Gambrell). After the Coast Guard vessel pulled alongside the vessel, Gambrell commenced an administrative search to determine if anyone was in distress and if the proper safety equipment was on board. Gambrell noticed that the vessel was drifting towards rocks and put the vessel into a side tow to allow him to complete the search safely. Mr. Kapilotis identified himself as the operator and presented his safe-boating certificate (No. V039792BO) to Gambrell. Gambrell observed from Mr. Kapilotis an odor of alcoholic beverage, slurred speech, and unsteadiness. As result of his conversation with Mr. Kapilotis, Gambrell was concerned for the safety of the vessel and its occupants and decided to tow the vessel to the Coast Guard Station in New London.

2. Petty Officer Gambrell notified the Coast Guard Station of his impending arrival. He requested assistance from the New London Police Department. Officer Matthew Gallante was notified by his dispatcher to proceed to the Coast Guard Station to meet the incoming vessel. DEP-6 indicates that Officer Gallante received this call at approximately 20:50 hours. Officer Gallante first met with Gambrell and approached Mr. Kapilotis after he was identified by Gambrell as the operator. Officer Gallante observed the odor of an alcoholic beverage from Mr. Kapilotis as well as slurred speech. Mr. Kapilotis was taken to the New London Police Department where Officer Gallante conducted three standard field sobriety tests. Before conducting the tests, Officer Gallante asked Mr. Kapilotis if he had any injuries, illnesses or physical conditions that would affect his performance on any of the tests and Mr. Kapilotis indicated that he did not have any such physical conditions. Officer Gallante explained each test and Mr. Kapilotis indicated that he understood them. Officer Gallante conducted three field-sobriety tests, including the Horizontal Gaze Nystagmus, Walk and Turn, and the One-Leg Stand. Mr. Kapilotis' performance on the first two tests indicated failure. He passed the one-leg stand test. Mr. Kapilotis was then placed under arrest, administered his Miranda rights and provided an opportunity to contact an attorney, which he refused. He was asked to submit to a chemical alcohol test and was informed of the consequences of refusal or failure of a chemical alcohol test. Mr. Kapilotis was given two separate alcohol breath tests to test his blood alcohol content (BAC). The second test was 34 minutes after the first. The results of these tests showed an elevated BAC of 0.167 of one percent from the first test conducted at 10:41 pm and 0.134 of one percent from the second test conducted at 11:15 pm. The legal limit is 0.08 of one percent BAC. Mr. Kapilotis was charged with boating under the influence of alcohol or drugs and released after signing a \$500 non-surety bond and promising to appear in New London Superior Court (G.A. 10).

### **CONCLUSIONS OF LAW**

To suspend a safe boating certificate under the provisions of §15-140q, I must find: (1) that the peace officer had probable cause to arrest Mr. Kapilotis for operating the

vessel while under the influence of intoxicating liquor or drugs, or both, or while he had an elevated blood alcohol content; (2) that he was placed under arrest; (3) that he (A) refused to submit to such test or analysis, or (B) submitted to such test or analysis, commenced within two hours of the time of operation, and the results of such test or analysis indicated that at the time of the alleged offense that Mr. Kapilotis had an elevated blood alcohol content; and (4) that he was operating the vessel. If these questions are answered affirmatively, then I am required to affirm the operator's suspension.

There is no evidence disputing that: (1) Mr. Kapilotis was arrested or (2) the officer had probable cause to arrest Mr. Kapilotis for operating a vessel while under the influence of intoxicating liquor or drugs or both or while Mr. Kapilotis had an elevated blood alcohol content. As a result of the following, these two elements of the statutory inquiry are answered in the affirmative:

- (1) The report (DEP-1) and testimony of Officer Gallante establish that Mr. Kapilotis was arrested, advised of his constitutional rights, and afforded an opportunity to contact an attorney.
- (2) The report (DEP-1) and testimony of Officer Gallante establish that there was probable cause for Officer Gallante to arrest Mr. Kapilotis. He observed that there was an odor of alcoholic beverage from Mr. Kapilotis' facial area and that his speech was slurred. Further, Mr. Kapilotis failed two out of three separate field sobriety tests conducted by Officer Gallante. There is no evidence that Mr. Kapilotis had any medical condition or injury that caused an inability to perform the tests as instructed.

I also find that Mr. Kapilotis submitted to two separate chemical alcohol tests and that the results of those two tests indicated that he had an elevated blood alcohol content of 0.167 and 0.134 respectively.

The elements at issue are whether Mr. Kapilotis was operating the vessel and whether the chemical alcohol test was commenced within two hours of operation. General Statutes § 15-140q(c). Petty Officer Gambrell observed Mr. Kapilotis standing at the helm of the vessel while it was idling and underway. Mr. Kapilotis indicated to Gambrell that he was the operator and presented his safe boating certificate. Despite testimony offered by Mr. Silvidio that he was the operator for the majority of the boating trip, Mr. Kapilotis was observed in a position to operate the boat while at least one of the engines was operating. His position at the helm of the vessel as observed by Gambrell coupled with his initial representation to Gambrell are sufficient for me to determine that he was operating the vessel.

Attorney Chinigo also argued that the chemical alcohol testing was not commenced within two hours of Mr. Kapilotis' operation. This is a critical issue. I cannot base my decision on the results of the chemical alcohol analysis unless it was commenced within two hours of operation. See *Tuttle v. Commissioner of Motor Vehicles*, 1996 Conn. Super. Lexis 1657 (1996). For purposes of § 15-140q, the word

“operate” means that the vessel is underway or aground and not moored, anchored or docked.” General Statutes § 15-133(d). I take notice of the fact that the word “operate” as it pertains to boating in general is defined elsewhere in the General Statutes as “to navigate or otherwise use a vessel.” General Statutes § 15-127. Section 15-127 clearly indicates, however, that the definitions in that section are to be used unless “the context requires otherwise.” §15-127. Section 15-133 clearly indicates that for the purposes of certain specific sections pertaining to operating under the influence, including §15-140q, “operate” means that the vessel is underway or aground and not moored, anchored or docked.” Therefore, the definition from §15-133 applies in the context of determining when Mr. Kapiotis ceased operation of the vessel for the purpose of determining the timeliness of the chemical alcohol test. Where “the legislation itself contains a specific definition, the courts are bound to accept that definition.” *Plasticrete Block and Supply Corp. v. Commissioner of Revenue Services* 216 Conn. 17, 27, 579 A.2d 20 (1990) quoting *Greenwich v. Liquor Control Commission*, 191 Conn. 528, 536-37, 469 A.2d 382 (1983); *Danbury v. Corbett*, 139 Conn. 379, 384, 94 A.2d 6 (1953). Section 15-133 provides a clear definition of “operate” for the purpose of these proceedings. The law requires that I use this definition.

The record indicates that the Coast Guard approached the vessel at approximately 8:15 pm. Gambrell’s testimony indicates that it took approximately 10 minutes to finish the administrative search and approximately 20 minutes to tow the vessel back to the Coast Guard station in New London after it was determined that no one else on board the vessel was able to safely operate the vessel. The New London Police Department dispatch log corroborates this timeframe. It indicates that New London PD received the call at approximately 8:50 pm. The dispatch log indicates that the vessel had not yet reached shore as of the initial call. I conclude that the earliest that the Coast Guard vessel reached shore with Mr. Kapiotis’ vessel in tow was 8:50 pm. As a result I find that Mr. Kapiotis had not ceased “operating” the vessel until 8:50 pm at the earliest when the vessel was docked. The record shows that the testing process began at 10:41 pm, or less than two hours from the time Mr. Kapiotis ceased operation. As a result, I find that the testing was commenced within two hours of the time of operation.

It is a rule of statutory construction that statutes and regulations are to be interpreted to avoid unintended illogical consequences or bizarre results. *Ensign-Bickford Realty Corp. v. Zoning Commission of Simsbury*, 245 Conn. 257 (1998). In this case, interpreting the provisions of §15-140q to allow Mr. Kapiotis to avoid the consequences of operating with an elevated blood alcohol content because the vessel had to be towed to shore would lead to a result that must be, and is, rejected. The vessel for which Mr. Kapiotis took responsibility had to be towed in due to its unsafe operating condition and the fact that Petty Officer Gambrell determined that no one else should operate the vessel due to his reasonable conclusion that the other occupants of the vessel were under the influence of alcohol. Although in a side tow with the Coast Guard vessel, by definition I can conclude that the vessel was still operating until it was made fast to shore.

The definition of operate in the context of boating under the influence and stated in § 15-133 contemplates that boating is unique when determining the time at which operation ceased for the purpose of starting the clock on the two-hour time period in which to commence a chemical analysis for blood alcohol content. It may take a certain period of time to remove a boater and his or her vessel from the water once probable cause is established to conduct the additional field sobriety testing and decide whether probable cause exists to arrest someone for boating under the influence. In addition and in fairness to the operator, field sobriety testing can only take place on shore and after a certain time period has passed to acclimate the operator to firm ground. It would not make sense that the legislature intended this statute to have such a limited effect on operators that are initially stopped offshore. Any other interpretation would make the two-hour time period in which to commence an analysis of an operator's blood alcohol content difficult, if not impossible to meet in such a situation. One can envision numerous scenarios where someone observed to be operating a vessel offshore will claim to have ceased operating at the time a peace officer decides to tow the vessel to a safe location and that that is the starting point for the two-hour time limit in which to commence the test. The legislature did not intend such an illogical consequence or bizarre result.

This administrative record contains substantial evidence to support my findings of fact and the reasonable conclusions I draw from those facts.<sup>1</sup> Mr. Kapilotis was observed to be operating the vessel on September 2, 2007 and indicated so to the Coast Guard official. Officer Gallante made observations of Mr. Kapilotis that indicated possible intoxication, including odor of an alcoholic beverage from Mr. Kapilotis' facial area, slurred speech, and an inability to perform two out of three field sobriety tests. These observations were later confirmed when Mr. Kapilotis was given two timely blood alcohol tests that revealed he was intoxicated while operating that vessel. The toxicology report admitted into evidence shows that Mr. Kapilotis had a blood alcohol content of .167 of 1% and .134 of 1%, in two separate tests respectively, given 34 minutes apart.

Having found in the affirmative on the four factors enumerated in General Statutes §15-140q, and, pursuant to the authority delegated to me by the Commissioner of Environmental Protection, §22a-2, **I find that the safe boating certificate of Nicholas G. Kapilotis should be suspended.**

### **ORDER**

The safe boating certificate of **Nicholas G. Kapilotis** is hereby suspended for 120 days, ***effective October 10, 2007 through February 7, 2008.*** **Nicholas G. Kapilotis** is hereby **ordered to surrender his safe boating certificate**, by personal delivery or first

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<sup>1</sup> *Pizzo v. Commissioner of Motor Vehicles*, 62 Conn. App. 571, 577 (2001), quoting *Murphy v. Commissioner of Motor Vehicles*, 254 Conn. 333, 343 (2000) (standard of review of an administrative decision is whether there is substantial evidence in record to support agency's findings of fact and whether conclusions drawn from facts are reasonable).

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 this 10th day of October, 2007, as a final order of the Commissioner of Environmental Protection and corrected on October 16, 2007 by:*

/s/ Kenneth M. Collette  
Kenneth M. Collette  
Hearing Officer

October 16, 2007  
Date

**PARTY LIST**

In the matter of Nicholas Kapiotis  
(Suspension of Boating Certificate)  
Incident No. 07-012

**PARTY**

Nicholas Kapiotis  
90 Lucas Park Road  
Norwich, CT 06360

**REPRESENTED BY**

Paul F. Chinigo, Esq.  
Chinigo, Leone & Maruzo, LLP  
P.O. Box 410  
Norwich, CT 06360

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Department of Environmental Protection  
Boating Division  
333 Ferry Road  
Old Lyme, CT 06371-0280

Kathryn Keenan – DEP Boating Division