



1 {1} The district court reversed the decision of a hearing officer of the Taxation  
2 and Revenue Department, Motor Vehicle Division (MVD) sustaining revocation of  
3 the driver's license of Nelson Rodarte (Driver) under the Implied Consent Act.  
4 This Court then granted MVD's petition for a writ of certiorari to review the  
5 district court's decision. MVD filed its brief in chief, and after we granted Driver  
6 three extensions of time to file an answer brief, Driver's counsel filed a motion to  
7 withdraw, stating he had "lost contact" with Driver after "numerous attempts." The  
8 motion to withdraw was granted, and we subsequently issued an order to Driver to  
9 show cause why the case should not be submitted to a panel solely on the brief in  
10 chief pursuant to Rule 12-312(B) NMRA. Driver failed to respond, and the matter  
11 is before us solely on the basis of the arguments contained in MVD's brief in chief.  
12 Because of the unusual posture of the appeal, we decide this case in a  
13 memorandum opinion, even though it raises an issue of first impression under the  
14 Implied Consent Act.

15 {2} The issue presented is whether a driver who refuses to submit to a chemical  
16 test of his breath for alcohol upon the request of the arresting law enforcement  
17 officer, after being advised that refusal will result in revocation of his driver's  
18 license for one year, must also be advised that the driver has a right to be given an  
19 opportunity to arrange for a chemical test of his own choosing as a condition to  
20 revocation of his driver's license under the Implied Consent Act. MVD's

1 arguments that the Implied Consent Act has no such requirement are based on a  
2 reasonable statutory interpretation, and in the absence of arguments to the contrary,  
3 are persuasive. We reverse the district court.

#### 4 **BACKGROUND**

5 {3} MVD held a hearing at Driver's request to contest the proposed revocation  
6 of his driver's license. The facts are not disputed. On March 20, 2015, Officer  
7 David Saiz of the New Mexico State Police stopped Driver for speeding. After  
8 conducting a DWI investigation, Officer Saiz arrested Driver for DWI and read the  
9 implied consent advisory to Driver from his issued card. Driver refused chemical  
10 testing. Driver was transported to the state police office where Officer Saiz again  
11 read the implied consent advisory to Driver, and Driver again refused. The implied  
12 consent advisory informed Driver he was required to submit to a blood or breath  
13 test, and if he refused, would receive a greater charge, and lose his driver's license  
14 for one year.

15 {4} Driver moved that the proposed revocation be rescinded, arguing that he was  
16 not advised that he could arrange for an independent test as required by NMSA  
17 1978, Section 66-8-109(B) (1993) of the Implied Consent Act. The hearing officer  
18 rejected Driver's argument on the basis that NMSA 1978, Section 66-8-111(B)  
19 (2005) in pertinent part, provides that the MVD "shall revoke" a person's driver's  
20 license for one year if "upon request, the person refused to submit to a chemical

1 test after being advised that failure to submit could result in revocation of the  
2 person's privilege to drive," and the evidence clearly established that Driver was so  
3 advised and refused. Driver "refused chemical testing after understanding what the  
4 consequences of his refusal would be." Thus, the hearing officer ruled, the absence  
5 of testimony concerning the right to an independent test was not "determinative."

6 {5} Driver appealed to the district court pursuant to NMSA 1978, Section 66-8-  
7 112(H) (2015) and Rule 1-074 NMRA. After briefing by the parties and oral  
8 argument, the district court reversed. The district court found that Driver "was  
9 properly advised his driving privileges may be revoked." In addition, the district  
10 court found that the Implied Consent Act also required that Driver be advised he  
11 had a right to a reasonable opportunity to arrange for an independent test of his  
12 own choosing. The district court concluded that "consistent with the intent of the  
13 Implied Consent Act, the information pertaining to independent testing may impact  
14 an arrestee in his or her decision on whether or not to submit to officer requested  
15 testing. Therefore, as a matter of law, the information pertaining to independent  
16 testing is intended by the Implied Consent Act to be part of the advisement to the  
17 arrestee." The district court concluded that there was insufficient evidence to  
18 support revoking the driver's license of Driver because Driver was not advised of  
19 his right to arrange for an independent test of his own choosing and reversed the  
20 hearing officer's decision. We granted MVD's application for a writ of certiorari.

1 **DISCUSSION**

2 **A. Standard of Review**

3 {6} We are called upon to determine whether MVD’s “interpretation of the  
4 Implied Consent Act is unreasonable or unlawful.” *Medrow v. State Taxation &*  
5 *Revenue Dep’t*, 1998-NMCA-173, ¶ 6, 126 N.M. 332, 968 P.2d 1195. This  
6 requires us to engage in statutory construction of the Implied Consent Act, and our  
7 review is therefore de novo. *See State v. Chakerian*, 2018-NMSC-019, ¶ 10, \_\_\_  
8 P.3d \_\_\_. “Our main goal when interpreting statutory language is to give effect to  
9 the Legislature’s intent. To discern the Legislature’s intent, the Court looks first to  
10 the plain language of the statute, giving the words their ordinary meaning, unless  
11 the Legislature indicates a different one was intended. When a statute contains  
12 language which is clear and unambiguous, we must give effect to that language  
13 and refrain from further statutory interpretation.” *Id.* (alteration, internal quotation  
14 marks, and citations omitted).

15 **B. Analysis**

16 {7} MVD first points out that all persons operating a motor vehicle in New  
17 Mexico are deemed to have given consent, subject to the Implied Consent Act, to  
18 chemical tests of their breath or blood. NMSA 1978, § 66-8-107(A) (1993). On the  
19 other hand, if a person under arrest for a violation of the Motor Vehicle Code  
20 “refuses upon request of a law enforcement officer to submit to chemical tests”

1 then “none shall be administered” except pursuant to a search warrant. Section 66-  
2 8-111(A). Such a refusal is not without consequences:

3           The[MVD], upon receipt of a statement signed under penalty of  
4 perjury from a law enforcement officer stating the officer’s reasonable  
5 grounds to believe the arrested person had been driving a motor  
6 vehicle within this state while under the influence of intoxicating  
7 liquor or drugs and that, upon request, the person refused to submit to  
8 a chemical test after being advised that failure to submit could result  
9 in revocation of the person’s privilege to drive, *shall revoke* the  
10 person’s New Mexico driver’s license or any nonresident operating  
11 privilege for a period of one year or until all conditions for license  
12 reinstatement are met, whichever is later.

13 Section 66-8-111(B) (emphasis added). Under its plain language, when a driver  
14 withdraws their implied consent to submit to chemical testing, and the conditions  
15 of Section 66-8-111(B) are present, MVD’s obligation is to revoke the person’s  
16 driver’s license.

17 {8}    The Implied Consent Act, on the other hand, affords a driver the opportunity  
18 to request a hearing before MVD to contest the revocation. Section 66-8-112(B).  
19 The hearing is limited to certain issues, the one pertinent to the case before us  
20 being “whether: (a) the person refused to submit to a test upon request of the law  
21 enforcement officer; and (b) the law enforcement officer advised that the failure to  
22 submit to a test could result in revocation of the person’s privilege to drive[.]”

23 Section 66-8-112(E)(4). The hearing officer “shall enter an order sustaining the  
24 revocation” of the person’s driver’s license if the hearing officer finds, in pertinent  
25 part, that “the person refused to submit to the test upon request of the law

1 enforcement officer after the law enforcement officer advised the person that the  
2 person's failure to submit to the test could result in the revocation of the person's  
3 privilege to drive[.]” Section 66-8-112(F)(4)(a). MVD argues that the hearing  
4 officer's findings demonstrated that these statutes were satisfied in all respects.  
5 Specifically, MVD argues that because Driver did not dispute the hearing officer's  
6 factual findings that he was informed his license would be revoked if he refused,  
7 and he still refused, the district court improperly disregarded the hearing officer's  
8 factual findings and legal conclusions.

9 {9} Turning to Section 66-8-109(B), the provision relied on by the district court,  
10 MVD notes that it specifically states:

11 The person *tested* shall be advised by the law enforcement  
12 officer of the person's right to be given an opportunity to arrange for a  
13 physician, licensed professional or practical nurse or laboratory  
14 technician or technologist who is employed by a hospital or physician  
15 of his own choosing to perform a chemical test *in addition to any test*  
16 *performed at the direction of a law enforcement officer.*

17 (Emphasis added.) MVD asserts that the Legislature deliberately used the term  
18 “tested” in the past tense. Therefore, MVD argues, “an officer must inform the  
19 person who complies and takes the officer's test about his right to the opportunity  
20 to arrange for an independent test.” This follows, according to MVD, because  
21 “[a]pplying rules of grammar, the statute indicates that the [L]egislature used the  
22 past tense of a verb to express its intent that this provision applies to a person who  
23 complied with his obligation and submitted to chemical testing.”

1 {10} MVD also points out, the statute expressly states that the independent test is  
2 “in addition to any test performed at the direction of the law enforcement officer.”  
3 MVD asserts this phrase further “demonstrates the [L]egislature’s intent that the  
4 purpose of the independent test is to provide a driver with his own test to challenge  
5 the one administered by the deputy.” And when a driver refuses to take the test  
6 requested by the arresting officer, reliability of the test results is not an issue, so  
7 advising the driver of the right to an independent test serves no purpose.

8 {11} Finally, MVD argues, Section 66-8-112(E)(4) does not include, as an issue  
9 to be decided at the MVD hearing, whether the driver was advised of the right to  
10 an independent test. Rather, according to MVD’s interpretation, “[t]he issues and  
11 findings are based upon the language of [Section] 66-8-111(B)—a person refuses  
12 to submit to chemical testing after being informed about the license revocation  
13 consequence.”

14 {12} We find MVD’s arguments reasonable, and in the absence of arguments to  
15 the contrary, persuasive. We conclude that the order of the district court must be  
16 reversed, and the revocation of Driver’s license to drive be reinstated.

17 **CONCLUSION**

18 {13} The order of the district court is reversed, and the case is remanded for entry  
19 of an order consistent with this opinion.

20 {14} **IT IS SO ORDERED.**

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**MICHAEL E. VIGIL, Judge**

3 **WE CONCUR:**

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5 **STEPHEN G. FRENCH, Judge**

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7 **EMIL J. KIEHNE, Judge**