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payments. We additionally note that § 48-125(2) provides a limitation: "Attorney's fees allowed shall not be deducted from the amounts ordered to be paid for medical services nor shall attorney's fees be charged to the medical providers." In short, the attorney fees under such subsection are in addition to the payment of the medical expenses themselves that the award requires the defendants to pay.

CONCLUSION

For the reasons set forth above, we find that the Workers' Compensation Court trial judge's decision denying an award of fees from BC/BS for the award of its subrogation interest was correct as a matter of law. However, taking the defendants' judicial admissions in their amended answer along with Mercier's admission that all treatment for Heesch's back condition was necessary and reasonable means that there was no reasonable controversy over either the compensability of her injury or the compensability of her medical expenses, including for the allergic reaction she suffered from the epidural injections. Therefore, the trial court was clearly wrong in finding that there was a reasonable controversy, and as a result, we remand the cause to the compensation court trial judge for assessment of the 50-percent waiting-time penalty, interest, and attorney fees as provided for in § 48-125.

AFFIRMED IN PART, AND IN PART REVERSED AND REMANDED WITH DIRECTIONS.

SARAH E. PENRY, APPELLEE, V. BEVERLY NETH, DIRECTOR OF THE DEPARTMENT OF MOTOR VEHICLES FOR THE STATE OF NEBRASKA, AND THE DEPARTMENT OF MOTOR VEHICLES FOR THE STATE OF NEBRASKA, APPELLANTS.

823 N.W.2d 243

Filed November 6, 2012. No. A-11-544.

1. **Administrative Law: Judgments: Appeal and Error.** A judgment or final order rendered by a district court in a judicial review pursuant to the Administrative Procedure Act may be reversed, vacated, or modified by an appellate court for errors appearing on the record.

2. ____: ____: ____. When reviewing an order of a district court under the Administrative Procedure Act for errors appearing on the record, the inquiry is whether the decision conforms to the law, is supported by competent evidence, and is neither arbitrary, capricious, nor unreasonable.
3. **Judgments: Appeal and Error.** Whether a decision conforms to law is by definition a question of law, in connection with which an appellate court reaches a conclusion independent of that reached by the lower court.
4. **Administrative Law: Statutes: Appeal and Error.** To the extent that the meaning and interpretation of statutes and regulations are involved, questions of law are presented, in connection with which an appellate court has an obligation to reach an independent conclusion irrespective of the decision made by the court below.
5. **Administrative Law.** Agency regulations that are properly adopted and filed with the Secretary of State of Nebraska have the effect of statutory law.
6. **Administrative Law: Appeal and Error.** An appellate court accords deference to an agency's interpretation of its own regulations unless that interpretation is plainly erroneous or inconsistent.
7. **Administrative Law.** An administrative body has no power or authority other than that specifically conferred by statute or by construction necessary to accomplish the plain purpose of the Administrative Procedure Act.
8. **Administrative Law: Motor Vehicles: Licenses and Permits: Revocation.** The authority of the director of the Department of Motor Vehicles to administratively revoke an operator's license is only that which is specifically conferred by the administrative license revocation statutes.
9. **Administrative Law: Rules of Evidence.** Telephonic hearings are permitted in proceedings under the Administrative Procedure Act in a formal rules of evidence hearing.
10. **Statutes: Appeal and Error.** Appellate courts give statutory language its plain and ordinary meaning and will not resort to interpretation to ascertain the meaning of statutory words which are plain, direct, and unambiguous.
11. **Statutes.** Statutes relating to the same subject matter will be construed so as to maintain a sensible and consistent scheme, giving effect to every provision.
12. ____. That which is implied in a statute is as much a part of it as that which is expressed.
13. **Statutes: Appeal and Error.** An appellate court will not read into a statute a meaning that is not there.
14. **Statutes.** A court must place on a statute a reasonable construction which best achieves the statute's purpose, rather than a construction which would defeat that purpose.
15. **Statutes: Intent: Appeal and Error.** In construing a statute, an appellate court looks to the statutory objective to be accomplished, the evils and mischiefs sought to be remedied, and the purpose to be served.
16. **Statutes: Presumptions: Legislature: Intent.** In construing a statute, it is presumed that the Legislature intended a sensible rather than an absurd result.
17. **Administrative Law: Statutes.** Although construction of a statute by a department charged with enforcing it is not controlling, considerable weight will be given to such a construction.

18. **Statutes: Legislature: Intent.** For a court to inquire into a statute's legislative history, the statute in question must be open to construction. A statute is open to construction when its terms require interpretation or may reasonably be considered ambiguous.
19. **Statutes.** A statute is ambiguous when the language used cannot be adequately understood either from the plain meaning of the statute or when considered in pari materia with any related statutes.
20. **Administrative Law: Drunk Driving: Licenses and Permits: Revocation.** The purpose of administrative license revocation is to protect the public from the health and safety hazards of drunk driving by quickly getting offenders off the road. At the same time, the administrative license revocation statutes also further a purpose of deterring other Nebraskans from driving drunk.
21. **Administrative Law: Motor Vehicles: Revocation.** Because of the substantial procedural benefits conveyed upon the Department of Motor Vehicles in an administrative license revocation proceeding, the department is expected to strictly comply with the applicable rules and regulations.
22. **Due Process: Notice.** Procedural due process limits the ability of the government to deprive people of interests which constitute liberty or property interests within the meaning of the Due Process Clause and requires that parties deprived of such interests be provided adequate notice and an opportunity to be heard.
23. **Due Process.** Due process claims are generally subjected to a two-part analysis: (1) Is the asserted interest protected by the Due Process Clause and (2) if so, what process is due?
24. **Motor Vehicles: Licenses and Permits: Revocation.** Suspension of issued motor vehicle operators' licenses involves state action that adjudicates important property interests of the licensees.
25. **Administrative Law: Motor Vehicles: Licenses and Permits: Due Process.** Under procedural due process, before a state may deprive a motorist of his or her driver's license, that state must provide a forum for the determination of the question and a meaningful hearing appropriate to the nature of the case.
26. **Administrative Law: Due Process: Notice: Evidence.** In proceedings before an administrative agency or tribunal that adjudicates property interests of an accused person, procedural due process requires notice, identification of the accuser, factual basis for the accusation, reasonable time and opportunity to present evidence concerning the accusation, and a hearing before an impartial adjudicator.
27. **Administrative Law: Due Process.** In determining whether an administrative procedure comports with due process, a court must consider (1) the private interest that will be affected by the official action; (2) the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and (3) the government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.
28. **Affidavits: Words and Phrases.** An affidavit is a written or printed declaration or statement of facts, made voluntarily, and confirmed by the oath or affirmation of the party making it, taken before a person having authority to administer such oath or affirmation.

29. **Affidavits: Proof.** An affidavit must bear on its face, by the certificate of the officer before whom it is taken, evidence that it was duly sworn to by the party making the same.
30. **Drunk Driving: Public Health and Welfare.** There is a substantial governmental interest in protecting public health and safety by removing drunken drivers from the highways.
31. **Due Process.** The concept of due process embodies the notion of fundamental fairness and defies precise definition.
32. ____. Due process is a flexible notion that must be decided on the facts presented in a particular case and calls for such procedural protections as the particular situation demands.

Appeal from the District Court for Lancaster County: STEVEN D. BURNS, Judge. Reversed and remanded with directions.

Jon Bruning, Attorney General, and Gregory J. Walklin for appellants.

Brad Roth, of McHenry, Haszard, Roth, Hupp, Burkholder & Blomenberg, P.C., L.L.O., and, on brief, Timothy C. Phillips, P.C., L.L.O., for appellee.

INBODY, Chief Judge, and MOORE and RIEDMANN, Judges.

MOORE, Judge.

INTRODUCTION

In this appeal, brought pursuant to the Administrative Procedure Act, the director of the Nebraska Department of Motor Vehicles and the Nebraska Department of Motor Vehicles (collectively the Department) appeal from a decision of the district court for Lancaster County vacating and remanding the Department's revocation of Sarah E. Penry's operator's license. The district court's decision was based on the conclusion that the hearing officer did not have statutory authority to swear in witnesses over the telephone and that Penry's due process rights were violated by having the arresting officer appear and be sworn telephonically during her administrative license revocation (ALR) hearing. For the reasons set forth herein, we reverse the decision of the district court and remand the cause with directions to affirm the revocation of Penry's license.

BACKGROUND

On January 17, 2011, Officer Chris Fields observed a vehicle fail to signal a turn and cross the centerline. After initiating a stop, Fields identified the driver as Penry. Penry had bloodshot and watery eyes and an odor of alcohol about her person. Penry admitted to drinking and showed impairment on several field sobriety tests. She also failed a preliminary breath test. After her arrest, Penry completed a chemical test of her breath, which showed the presence of .122 of a gram of alcohol per 210 liters of breath. Thereafter, Fields completed a sworn report, which was notarized. Upon receiving the sworn report, the Department sent a notice of hearing to Penry and Fields which indicated the hearing would be "held by teleconference hearing procedures" and explained the telephonic hearing procedures for the motorist and the arresting officer.

Penry filed a petition with the Department, and an ALR hearing was held on February 24, 2011. The hearing officer and Penry's attorney were located together in Lincoln, Nebraska. Penry was not present. Fields appeared as a witness via telephone. The hearing officer administered the oath to Fields over the telephone, and Fields swore to tell the truth and identified himself. Penry's attorney objected to the oath's being administered to Fields outside of the presence of the officer administering it and requested a standing objection to Fields' testimony. The hearing officer overruled the objection and granted the continuing objection to the testimony.

Fields testified that he had contact with Penry and completed a sworn report, which he identified by the identification number and the date stamp. The hearing officer received Fields' sworn report into evidence. Penry's counsel asked Fields only four questions: (1) "Officer Fields, you're currently testifying by telephone, correct?"; (2) "And you were administered an oath prior to your telephonic testimony?"; (3) "And you are not in the presence of the officer that was administering the oath, are you?"; and (4) "And there is no officer there with you that's authorized to administer oaths?"

Following the hearing, the hearing officer issued findings of fact, and on February 25, 2011, the director issued an order

revoking Penry's license for the statutory period, effective March 3.

On March 1, 2011, Penry filed a complaint for review in the district court for Lancaster County. The district court entered an amended judgment finding that minimum due process requires a person clothed with the power to administer oaths be personally present with the witness at the time the witness is sworn and testifies in telephonic ALR hearings before the Department. The court also found that the Department was without statutory authority to permit a witness, who was not a party, to testify telephonically.

The decision of the Department was vacated, and the case was remanded for proceedings consistent with the district court's order. The Department perfected its appeal to this court.

ASSIGNMENTS OF ERROR

The Department assigns that the district court erred in finding (1) that the Department hearing officer was without statutory authority to administer an oath telephonically to the arresting officer and (2) that administering an oath telephonically to the arresting officer violated Penry's due process rights.

STANDARD OF REVIEW

[1-3] A judgment or final order rendered by a district court in a judicial review pursuant to the Administrative Procedure Act may be reversed, vacated, or modified by an appellate court for errors appearing on the record. *Hass v. Neth*, 265 Neb. 321, 657 N.W.2d 11 (2003). When reviewing an order of a district court under the Administrative Procedure Act for errors appearing on the record, the inquiry is whether the decision conforms to the law, is supported by competent evidence, and is neither arbitrary, capricious, nor unreasonable. *Id*. Whether a decision conforms to law is by definition a question of law, in connection with which an appellate court reaches a conclusion independent of that reached by the lower court. *Id*.

[4-6] To the extent that the meaning and interpretation of statutes and regulations are involved, questions of law are presented, in connection with which an appellate court has an obligation to reach an independent conclusion irrespective of the decision made by the court below. *Liddell-Toney v. Department of Health & Human Servs.*, 281 Neb. 532, 797 N.W.2d 28 (2011). Agency regulations that are properly adopted and filed with the Secretary of State of Nebraska have the effect of statutory law. *Smalley v. Nebraska Dept. of Health & Human Servs.*, 283 Neb. 544, 811 N.W.2d 246 (2012). An appellate court accords deference to an agency's interpretation of its own regulations unless that interpretation is plainly erroneous or inconsistent. *Liddell-Toney v. Department of Health & Human Servs., supra.*

ANALYSIS

In the instant appeal, we must decide whether the district court's decision vacating the Department's revocation of Penry's license and remanding the case for further proceedings conforms to the law. The district court determined that the hearing officer was without statutory authority to swear in witnesses over the telephone in an ALR proceeding and that doing so violated Penry's due process rights.

Statutory Authority to Administer Telephonic Oaths.

[7,8] We first examine whether the hearing officer has the statutory authority to administer telephonic oaths during an ALR hearing, because an administrative body has no power or authority other than that specifically conferred by statute or by construction necessary to accomplish the plain purpose of the act. See *Hahn v. Neth*, 270 Neb. 164, 699 N.W.2d 32 (2005). The authority of the director of the Department to administratively revoke an operator's license is only that which is specifically conferred by the ALR statutes. *Id.*

[9] Ordinarily, judges may not use telephonic methods to conduct proceedings involving testimony of witnesses by oral examination. Neb. Rev. Stat. § 24-734(3) (Reissue 2008). However, the Nebraska Supreme Court has previously held

that telephonic hearings are permitted in proceedings under the Administrative Procedure Act in a formal "rules of evidence" hearing. See *Kimball v. Nebraska Dept. of Motor Vehicles*, 255 Neb. 430, 586 N.W.2d 439 (1998).

Further, the statutes specifically relating to ALR's allow for telephonic hearings. Neb. Rev. Stat. § 60-498.01(6)(a) (Reissue 2010) provides in pertinent part: "The hearing and any prehearing conference may be conducted in person or by telephone, television, or other electronic means at the discretion of the director, and all parties may participate by such means at the discretion of the director." See, also, 247 Neb. Admin. Code, ch. 1, § 022.01 (2006).

Additionally, § 60-498.01(7) provides in part that

> [t]he director shall adopt and promulgate rules and regulations to govern the conduct of the hearing and insure that the hearing will proceed in an orderly manner. The director may appoint a hearing officer to preside at the hearing, administer oaths, examine witnesses, take testimony, and report to the director.

[10-13] We are guided in our analysis by several well-known principles of statutory construction. Appellate courts give statutory language its plain and ordinary meaning and will not resort to interpretation to ascertain the meaning of statutory words which are plain, direct, and unambiguous. See *Trumble v. Sarpy County Board*, 283 Neb. 486, 810 N.W.2d 732 (2012). Statutes relating to the same subject matter will be construed so as to maintain a sensible and consistent scheme, giving effect to every provision. *In re Interest of Katrina R.*, 281 Neb. 907, 799 N.W.2d 673 (2011). That which is implied in a statute is as much a part of it as that which is expressed. *Pepitone v. Winn*, 272 Neb. 443, 722 N.W.2d 710 (2006). An appellate court will not read into a statute a meaning that is not there. *AT&T Communications v. Nebraska Public Serv. Comm.*, 283 Neb. 204, 811 N.W.2d 666 (2012).

[14-17] A court must place on a statute a reasonable construction which best achieves the statute's purpose, rather than a construction which would defeat that purpose. *Herrington v. P.R. Ventures*, 279 Neb. 754, 781 N.W.2d 196 (2010). In construing a statute, an appellate court looks to the statutory

objective to be accomplished, the evils and mischiefs sought to be remedied, and the purpose to be served. *Id*. See *Martensen v. Rejda Bros*., 283 Neb. 279, 808 N.W.2d 855 (2012). In construing a statute, it is presumed that the Legislature intended a sensible rather than an absurd result. *Frenchman-Cambridge Irr. Dist. v. Dept. of Nat. Res*., 281 Neb. 992, 801 N.W.2d 253 (2011). Although construction of a statute by a department charged with enforcing it is not controlling, considerable weight will be given to such a construction. *City of Omaha v. Kum & Go*, 263 Neb. 724, 642 N.W.2d 154 (2002).

[18,19] For a court to inquire into a statute's legislative history, the statute in question must be open to construction. A statute is open to construction when its terms require interpretation or may reasonably be considered ambiguous. *Agena v. Lancaster Cty. Bd. of Equal*., 276 Neb. 851, 758 N.W.2d 363 (2008). A statute is ambiguous when the language used cannot be adequately understood either from the plain meaning of the statute or when considered in pari materia with any related statutes. *Id*.

The Department argues that the plain meaning of the statute allows the hearings to be conducted by telephone and allows the hearing officer to administer oaths, examine witnesses, and take testimony. § 60-498.01(7); 247 Neb. Admin. Code, ch. 1, § 003.05A (2006). The Department also argues that the sensible interpretation of the ALR statutes is the hearing officer may administer oaths telephonically and that this interpretation is consistent with the purpose of the legislation. Finally, the Department adds that the interpretation by the district court produces an absurd result.

On the other hand, Penry argues that § 60-498.01(6)(a) refers only to "*all parties*" as being able to participate by telephone. (Emphasis supplied.) Penry also points to the Department's rules which define "party" as the driver and the director. See 247 Neb. Admin. Code, ch. 1, § 002.07 (2006). Penry argues that because the statute does not specifically allow nonparty witnesses to appear telephonically or to swear to an oath telephonically, then the director and the hearing officers do not have the authority to give the oath to or hear testimony from arresting officers telephonically.

We determine that it is appropriate to look to the legislative history in this case in order to construe the statute in question as it relates to the participation of parties by telephone. During the committee hearing, there was testimony that the proposed procedure, including the discretion to hear an ALR matter by telephone, would free up officers' time and save the cost of paying overtime. Transportation and Telecommunications Committee Hearing, L.B. 209, 98th Leg., 1st Sess. 24, 37 (Feb. 10, 2003); Floor Debate, L.B. 209, Transportation and Telecommunications Committee, 98th Leg., 1st Sess. 2348 (Mar. 13, 2003).

We have also examined the Department's regulations concerning the ALR hearing. The regulations provide that "[t]he hearing and any preconference hearing may be conducted in person or by telephone, video conference, or other electronic means at the discretion of the Director, and *all participants* may participate by such means." 247 Neb. Admin. Code, ch. 1, § 004.01C (2006) (emphasis supplied). The regulations also provide that the "failure of the arresting officer to appear [at the ALR hearing] *or be otherwise available for cross-examination* shall be cause for dismissal of the [ALR] by the Department except when the motorist does not appear or make any showing." 247 Neb. Admin. Code, ch. 1, § 017.02 (2006) (emphasis supplied). These regulations indicate the Department's construction of § 60-498.01(6)(a) as applicable to the arresting officer, such that the arresting officer may appear by telephone.

[20] The purpose of an ALR is to protect the public from the health and safety hazards of drunk driving by quickly getting offenders off the road. *Murray v. Neth*, 279 Neb. 947, 783 N.W.2d 424 (2010). At the same time, the ALR statutes also further a purpose of deterring other Nebraskans from driving drunk. *Id.*

> Because persons who drive while under the influence of alcohol present a hazard to the health and safety of all persons using the highways, a procedure is needed for the swift and certain revocation of the operator's license of any person who has shown himself or herself to be a health and safety hazard . . . .

§ 60-498.01(1). Accord, *Murray v. Neth, supra*; 247 Neb. Admin. Code, ch. 1, § 001.02 (2006). Here, the Department's procedures governing the revocation of an operator's license when an individual has been driving a vehicle while under the influence of alcohol are in furtherance of this statutory purpose.

[21] On the other hand, it has also been recognized that because of the substantial procedural benefits conveyed upon the Department in an ALR proceeding, the Department is expected to strictly comply with the applicable rules and regulations. *Hahn v. Neth*, 270 Neb. 164, 699 N.W.2d 32 (2005); *Morrissey v. Department of Motor Vehicles*, 264 Neb. 456, 647 N.W.2d 644 (2002), *disapproved on other grounds, Hahn v. Neth, supra*. The Department complied with its rules and regulations in allowing the arresting officer to appear by telephone. See 247 Neb. Admin. Code, ch. 1, § 004.01C.

We are required to reach an independent conclusion regarding the meaning and interpretation of a statute. We conclude that a reasonable construction of § 60-498.01(6)(a) is that it applies to the participation of the arresting officer by telephone at the ALR hearing.

Due Process.

The Department also alleges that it was error for the district court to find that Penry was deprived of due process of law by the administration of an oath telephonically to the arresting officer in the ALR hearing.

[22] Procedural due process limits the ability of the government to deprive people of interests which constitute "liberty" or "property" interests within the meaning of the Due Process Clause and requires that parties deprived of such interests be provided adequate notice and an opportunity to be heard. *Hass v. Neth*, 265 Neb. 321, 657 N.W.2d 11 (2003); *Marshall v. Wimes*, 261 Neb. 846, 626 N.W.2d 229 (2001).

[23-26] Due process claims are generally subjected to a two-part analysis: (1) Is the asserted interest protected by the Due Process Clause and (2) if so, what process is due? *State v. Hess*, 261 Neb. 368, 622 N.W.2d 891 (2001). When it comes to the suspension of motor vehicle operators' licenses, both of

these questions have previously been addressed by Nebraska courts. In response to the first question, the Nebraska Supreme Court has held that the "[s]uspension of issued motor vehicle operators' licenses involves state action that adjudicates important property interests of the licensees." *Stenger v. Department of Motor Vehicles*, 274 Neb. 819, 824, 743 N.W.2d 758, 762 (2008). Consequently, licenses are not to be taken away by a state without the procedural due process required by the 14th Amendment. See *Stenger v. Department of Motor Vehicles, supra*. As for the specific procedures required in this situation, our due process jurisprudence mandates that the Department "provide a forum for the determination of the question and a meaningful hearing appropriate to the nature of the case." See *Murray v. Neth*, 279 Neb. 947, 955, 783 N.W.2d 424, 432 (2010). This hearing must include "notice, identification of the accuser, factual basis for the accusation, reasonable time and opportunity to present evidence concerning the accusation, and a hearing before an impartial adjudicator." *Id*.

The specific question before the district court in the instant case—whether the arresting officer can be sworn telephonically—relates to whether there was sufficient identification of the accuser.

[27] In *Mathews v. Eldridge*, 424 U.S. 319, 96 S. Ct. 893, 47 L. Ed. 2d 18 (1976), the U.S. Supreme Court set forth a three-part balancing test to be considered in resolving an inquiry into the specific dictates of due process: (1) the private interest that will be affected by the official action; (2) the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and (3) the government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail. The Nebraska Supreme Court has adopted this *Mathews* analysis when determining whether an administrative procedure comports with due process. See *Marshall v. Wimes, supra*.

With respect to the first factor of the *Mathews* analysis, the private interest at stake is the continued possession of an operator's license, which we have already recognized

as being significant. See *Stenger v. Department of Motor Vehicles, supra*.

The next factor we consider is the risk of an erroneous deprivation and the value, if any, of alternative procedures. In the present context, the risks identified by the district court are the possibility that the witness appearing by telephone is not actually the arresting officer or that the arresting officer may be testifying from materials not available to the other participants. The district court concluded that without the assurance of the identity of the person testifying and the document about which he or she testified, Penry was deprived of the opportunity to meaningfully cross-examine the arresting officer.

The Department argues that the officer's sworn report, standing alone, provides a strong procedural safeguard which eliminates the risk of erroneous deprivation and that there were several safeguards taken to ensure the arresting officer was referring to the correct sworn report. The Department also argues that there is little to no risk that someone could appear telephonically impersonating the arresting officer at an ALR hearing.

[28,29] We agree with the Department that the officer's sworn report provides a procedural safeguard eliminating the risk of erroneous deprivation. In the sworn report, the "accuser" (the arresting officer) has been identified and has had a notary verify such identity. The sworn report is, by definition, an affidavit. An affidavit is a written or printed declaration or statement of facts, made voluntarily, and confirmed by the oath or affirmation of the party making it, taken before a person having authority to administer such oath or affirmation. *Hass v. Neth*, 265 Neb. 321, 657 N.W.2d 11 (2003). An affidavit must bear on its face, by the certificate of the officer before whom it is taken, evidence that it was duly sworn to by the party making the same. *Id.*

In this case, when questioned about the sworn report, the hearing officer specifically asked Fields whether he was on duty on January 17, 2011; whether he arrested Penry on that date; and whether as a result of that arrest, he filled out a sworn report. The hearing officer asked Fields to verify the identification number at the top of the document, which verification

ensured that the hearing officer and Fields were referring to the same document. There was no risk that the arresting officer was referring to a document other than the sworn report received in evidence at the hearing.

Additionally, the notice of hearing is provided to the arresting officer and asks the arresting officer to provide a telephone number to the Department. On the date and time of the hearing, the hearing officer then calls the number that was provided. If the arresting officer does not receive a call within 10 minutes of the hearing start time, he or she is instructed on the notice of hearing to call in to the hearing officer's line. There is little risk that a person other than the arresting officer would be called by the hearing officer or call into the hearing.

Finally, Penry was entitled to cross-examine the arresting officer to dispel any concerns about his identity and the exhibit from which he was testifying. She chose not to do so, but asked questions only to confirm that the officer was administered the oath telephonically and that the officer was not in the presence of an officer authorized to administer oaths.

We now turn to the final factor of the balancing test set out in *Mathews v. Eldridge*, 424 U.S. 319, 96 S. Ct. 893, 47 L. Ed. 2d 18 (1976): the government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail. The Department argues that requiring a notary to be present for every arresting officer's testimony would severely undermine the rapidity and effectiveness of the ALR process. The Department contends that this additional requirement would impose a significant financial and administrative burden in retaining and coordinating notaries and undermine the convenience of the arresting officers because they could no longer call into such hearings from any location.

It is clear that the purpose of allowing telephonic hearings is to ensure that these matters are resolved quickly and economically. The fiscal and administrative burdens of the additional requirements proposed by the district court would clearly frustrate these interests.

[30] It is well established that there is a substantial governmental interest in protecting public health and safety by

removing drunken drivers from the highways. *Marshall v. Wimes*, 261 Neb. 846, 626 N.W.2d 229 (2001). See, also, *Mackey v. Montrym*, 443 U.S. 1, 99 S. Ct. 2612, 61 L. Ed. 2d 321 (1979). The government also has an interest in ensuring that the ALR hearing will proceed in an orderly manner. § 60-498.01(7).

[31,32] The concept of due process embodies the notion of fundamental fairness and defies precise definition. *Marshall v. Wimes, supra*. Due process is a flexible notion that must be decided on the facts presented in a particular case and calls for such procedural protections as the particular situation demands. *Id*. We determine, based on the facts presented in this particular case, that allowing the arresting officer to testify by telephone did not violate Penry's due process rights. Consequently, the district court erred in concluding otherwise.

CONCLUSION

We conclude that the district court erred in finding that there was no statutory authorization for allowing the arresting officer to be sworn and to testify by telephone at the ALR hearing and in finding that such procedure violated Penry's due process rights. Accordingly, we reverse the judgment of the district court and remand the cause with directions to affirm the revocation of Penry's driving privileges.

REVERSED AND REMANDED WITH DIRECTIONS.

TIMOTHY J. POHLMANN, APPELLANT AND CROSS-APPELLEE, V. JANNA B. POHLMANN, APPELLEE AND CROSS-APPELLANT.

824 N.W.2d 63

Filed November 13, 2012. No. A-11-1041.

1. **Divorce: Child Custody: Child Support: Property Division: Alimony: Appeal and Error.** An appellate court's review in an action for dissolution of marriage is de novo on the record to determine whether there has been an abuse of discretion by the trial judge. This standard of review applies to the trial court's determinations regarding custody, child support, division of property, and alimony.
2. **Judgments: Words and Phrases.** An abuse of discretion occurs when the trial court's decision is based upon reasons that are untenable or unreasonable or if its action is clearly against justice or conscience, reason, and evidence.