CDLS, CMVS AND THE COURTS

NACM 2013
San Antonio, TX
7/15/13

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National Traffic Law Center
National District Attorneys Association
ABOUT NDAA...

- Non-profit organization
- Provides support to prosecutors/officers
- Multiple areas of criminal law
- Library of resource materials
- Database of experts
- Publications
- Partners w/other organizations
- Receives grant funds
• Specific focus on traffic prosecution
• Impaired driving
• Vehicular Homicide
• Two experienced prosecuting attorneys (NHTSA funded)
• “Between the Lines” Newsletter
• Monographs
• FMCSA grant for senior attorney
RESOURCES...

• www.NDAA.org
• Federal Motor Carrier Safety Administration: www.fmcsa.dot.gov
• Commercial Vehicle Safety Alliance: www.cvsa.org
• National Judicial College: www.judges.org
• National Center for State Courts: www.ncsc.org
CRIME AND COMMERCIAL MOTOR VEHICLES

- Impaired/Aggressive Driving
- Serial killers
- Trafficking
  - Human
  - Drugs
The suspects are predominantly long-haul truck drivers. But the mobile nature of the offenders, the unsafe lifestyles of the victims, the significant distances and multiple jurisdictions involved, and the scarcity of witnesses or forensic evidence can make these cases tough to solve." - FBI
Average Daily Long-Haul Freight Truck Traffic on the National Highway System: 2002

Note: Long-haul freight trucks serve locations at least 50 miles apart, excluding trucks that are used in intermodal movements.
DC Area is major crossroads for truckers!

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500 MURDER VICTIMS ALONG/NEAR HIGHWAYS

Highway violence

In the past four decades, 459 deaths and 41 attempted homicides are believed to be linked to serial killers who are using the nation's highways to find and dispose of their victims. The FBI's breakdown by state:
DISPOSITION RATES BY VIOLATION TYPE*

Other Than Serious Violation

- Not Guilty: 18%
- Guilty: 82%

Serious Violations

- Not Guilty: 27%
- Guilty: 73%

Disqualifying Violations

- Other: 11%
- Not Guilty: 64%
- Guilty: 25%

* Data on CMV drivers from CVSA Self Assessment Study
WHAT CAUSES LACK OF ENFORCEMENT?

• Road officers unwilling to stop larger vehicles

• Safety campaigns targeted towards privately owned/smaller vehicles

• Roadside negotiation reduces ticketing

• Prosecutors and courts not holding drivers accountable
• Federal grant program provides assistance to States to reduce the number/severity of crashes and hazmat incidents involving (CMV)

• MCSAP sets forth conditions for participation by States/local jurisdictions

• Promotes adoption and uniform enforcement of safety rules, regulations, and standards compatible with the Federal Motor Carrier Safety Regulations (FMCSRs) and Federal Hazardous Material Regulations (HMRs) for both interstate and intrastate motor carriers and drivers
IDENTIFYING DANGEROUS CDL HOLDERS

- Courts may be in the best position
- Enforcement is critical
- Understand mental and physical conditions that may impair driving
- Identify criminal behavior that could impact safe CMV operation
CDL CASES PRESENT CHALLENGES

• Unfamiliarity with CFRs
• Most safety campaigns not aimed at CMVs
• Officers not trained/encouraged in large vehicle enforcement
• CDL holders use sympathy defense
• Some resistance to higher standards imposed on professional drivers
• No existing procedures for best practices reporting
CMV INVOLVED CASES

- CDL basic info is critical
- CMV evidence may be different
- Importance of working with Federal and industry partners
- Recklessness based crimes may involve multiple regulations violations
- Reporting CMV crash outcomes is critical
PROSECUTORS & JUDGES SHOULD...

- Have basic CDL knowledge
- Be familiar with driver/operator responsibilities
- Understand basics of CMV inspections
- Be aware of records/documents kept by driver
- Be able to check CDL for validity and applicability
ENFORCING AND ADJUDICATING CDL RELATED VIOLATIONS

- Standard traffic rules apply to CMVs (apply common sense)

- Awareness that almost any kind of case may affect CDL status

- Importance of indicating ‘CMV’ or ‘CDL holder’ cannot be over-emphasized
Alcohol is less likely than other drugs

Prescription drug use may be an issue if there is an injury or illness

Stimulants and depressants may alternate to accommodate sleep cycles

Medical defenses may indicate disqualification
CFRS: ALCOHOL & DRUG USE

- CFRs do not define DWI/DUI
- CFRs require only CDL disqualification, not criminal prosecution or other penalties
- No Schedule I drug use
- Prescription drugs maybe ok with permission (no Methadone)
- Some loopholes apply
DOT
MEDICAL
MARIJUANA
POLICY

• DOT policy - 49 CFR Part 40, at 40.151(e) – does not authorize “medical marijuana” as a valid explanation for a transportation employee’s positive drug test result

• Medical Review Officers will not verify a drug test as negative based upon information that a physician recommended that the employee use “medical marijuana”

• Marijuana remains a drug listed in Schedule I of the Controlled Substances Act

• It remains unacceptable for any safety-sensitive employee subject to drug testing under the Department of Transportation’s drug testing regulations to use marijuana.

TDOT Office of Drug and Alcohol Policy Compliance
Issued 10/22/09
DWI CONSEQUENCES FOR CDL

• .04% BAC = 1 yr disqualification

• 1st DWI/IC = 1 yr disqualification

• 1st is 3yrs w/hazmat on board

• 2nd or subsequent = 10 yrs to lifetime

• NO restricted CDL
Cases not involving traffic may have CDL implications.

Issues involving mental health, physical impairment, illness or drug/alcohol addiction may lead to medical disqualification if reported.

Work with CDL staff at state licensing authority to develop reporting protocol Per se Level 2 - DWI .07% in CMV.
MEDICAL QUALIFICATION
49 CFR 391.41

- Driver subject to this part must NOT operate a CMV unless medically certified in accordance with regulations as physically qualified to do so

- Deliberate omission or falsification of information during certification process may invalidate certificate and subject driver to civil penalties/fines
MEDICAL EXAMINER’S CERTIFICATE

I certify that I have examined ___________________________ in accordance with the Federal Motor Carrier Safety Regulations (49 CFR 391.41-391.49) and with knowledge of the driving duties, I find this person is qualified; and, if applicable, only when:

- [ ] wearing corrective lenses
- [ ] wearing hearing aid
- [ ] accompanied by a ___________________________ waiver exemption
- [ ] driving within an exempt Intracity zone (49 CFR 391.62)
- [ ] accompanied by a Skill Performance Evaluation Certificate (SPE)
- [ ] Qualified by operation of 49 CFR 391.64

The information I have provided regarding this physical examination is true and complete. A complete examination form with any attachment embodies my findings completely and correctly, and is on file in my office.

<table>
<thead>
<tr>
<th>SIGNATURE OF MEDICAL EXAMINER</th>
<th>TELEPHONE</th>
<th>DATE</th>
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<table>
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<tr>
<th>MEDICAL EXAMINER’S NAME (PRINT)</th>
<th>MD</th>
<th>DO</th>
<th>Physician Assistant</th>
<th>Chiropractor</th>
<th>Advanced Practice Nurse</th>
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<th>MEDICAL EXAMINER’S LICENSE OR CERTIFICATE NO. ISSUING STATE</th>
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<table>
<thead>
<tr>
<th>SIGNATURE OF DRIVER</th>
<th>DRIVER’S LICENSE NO.</th>
<th>STATE</th>
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<table>
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<tr>
<th>ADDRESS OF DRIVER</th>
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<table>
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<tr>
<th>MEDICAL CERTIFICATE EXPIRATION DATE</th>
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# Medical Examination Report

**FOR COMMERCIAL DRIVER FITNESS DETERMINATION**

## 1. DRIVER'S INFORMATION

<table>
<thead>
<tr>
<th>Driver's Name (Last, First, Middle)</th>
<th>Social Security No.</th>
<th>Birthdate M/D/Y</th>
<th>Age</th>
<th>Sex M F</th>
<th>New Certification</th>
<th>Recertification Follow-up</th>
<th>Date of Exam</th>
</tr>
</thead>
<tbody>
<tr>
<td>Address</td>
<td>City, State, Zip Code</td>
<td>Work Tel: ()</td>
<td></td>
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<td></td>
</tr>
<tr>
<td></td>
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<td>Home Tel: ()</td>
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</tr>
<tr>
<td></td>
<td></td>
<td>Driver License No.</td>
<td></td>
<td></td>
<td>License Class A B C D</td>
<td></td>
<td>State of issue</td>
</tr>
</tbody>
</table>

## 2. HEALTH HISTORY

Driver completes this section, but medical examiner is encouraged to discuss with driver.

### Yes No

- Any illness or injury in the last 5 years?
- Head/Brain injuries, disorders or illnesses
- Seizures, epilepsy
- Medication, ...
- Eye disorders or Impaired vision (except corrective lenses)
- Ear disorders, loss of hearing or balance
- Heart disease or heart attack, other cardiovascular condition
- Medication, ...
- Heart surgery (valve replacement by-passes, angioplasty, ...
- High blood pressure, medication, ...
- Shortness of breath

### Yes No

- Lung disease, emphysema, asthma, chronic bronchitis
- Kidney disease, dialysis
- Liver disease
- Digestive problems
- Diabetes or elevated blood sugar controlled by: diet, pill, insulin
- Medication, ...
- Nervous or psychiatric disorders, e.g., severe depression, medication, ...
- Loss of, or altered consciousness

For any YES answer, indicate onset date, diagnosis, treating physician's name and address, and any current limitation. List all medications (including over-the-counter medications) used regularly or recently.

### Medical Examiner’s Comments on Health History

(The medical examiner must review and discuss with the driver any “yes” answers and potential hazards of medications, including over-the-counter medications, while driving. This discussion must be documented below.)

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I certify that the above information is complete and true. I understand that inaccurate, false or missing information may invalidate the examination and my Medical Examiner's Certificate.

Driver’s Signature: __________________________  Date: __________________________

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Medical Examiner's Comments on Health History: __________________________
SENTENCING DWI DEFENDANTS

- Minimum license disqualifications mandatory
- Drug testing may be prudent
- NO restricted CDL
REPORTING CDL RELATED CONVICTIONS
CFR MANDATED
CDL DISQUALIFICATION

• Any felony in ANY motor vehicle disqualifies CDL holder for 1 yr.

• Drug trafficking violation will disqualify for LIFE

• Definition of conviction is different under federal regulations

• A conviction NOT reported to the proper licensing authority is the SAME as no conviction at all
Masking is Prohibited by Federal Law
(49 C.F.R. § 384.226)

The State must not mask, defer imposition of judgment, or allow an individual to enter into a diversion program that would prevent a CDL driver’s conviction for any violation, in any type of motor vehicle, of a State or local traffic control law (except a parking violation) from appearing on the driver’s record, whether the driver was convicted for an offense committed in the State where the driver is licensed in another State.
CONVICTION PURSUANT TO 49 C.F.R §383.5

Any unvacated adjudication of guilt, or a determination that a person has violated or failed to comply with the law in a court of original jurisdiction or by an unauthorized administrative tribunal, an unvacated forfeiture of bail or collateral deposited to secure the person’s appearance in court, a plea of guilty or nolo contendre accepted by the court, the payment of a fine or court cost, or violation of a condition of release without bail, regardless of whether or not the penalty is rebated, suspended, or probated.
QUESTIONS