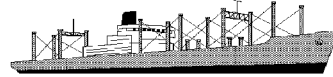
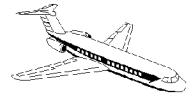




Rollin' On



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MEDICAL EXAMINERS: NEW RULES COURTESY OF AN OLD MANDATE

It has finally come to pass. The FMCSA issued a new rule a few days ago regarding a national registry for medical examiners. The initial notice of this rule making was in December 2008, so it took more than three years to become final. But few people are complaining about the delay, as the costs are generally expected to go up.

The rule applies to medical examiners, who now must be certified, and who conduct physical examinations for interstate commercial motor vehicle drivers. These certified medical examiners will be required to meet certain criteria, such as:

- (1) Complete certain training regarding physical qualification standards imposed by FMCSA;
- (2) Submit to a test to verify an understanding of those standards; and
- (3) Maintain and demonstrate competence through periodic training and testing.

After the national registry is established, and after a transition period, motor carriers and drivers will be required to only use those medical examiners. FMCSA will thereafter only accept medical examiner certificates from persons on the national registry.

This is all done with a view to improving highway safety. It also seeks to improve driver health.

Up to this point, there has been no specific training required for medical examiners who performed the driver physical examinations. They were only required to be knowledgeable about the

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regulations. So there was some perceived loopy aspects of the old regime. There was the potential to shop around for a medical examiner who was not up to speed or perhaps was medically or ethically challenged in some respects.

The old rules only required the medical examiner to conduct physical examinations, without requiring the examiner to have any specific knowledge of FMCSA's physical qualification standards. There was no knowledge verification verified by testing.

Consequently, some examiners may have been unfamiliar with FMCSA's physical qualification standards, or even if familiar with those standards, how to apply them.

Also, there was the issue of how aware the medical examiners were of the physical and mental demands confronting the drivers. This included an appreciation, or lack thereof, of the various medical conditions of the drivers, and what medical options could be used to treat those conditions.

Looking backward, with a jaundiced outlook, one could wonder why it took so long for the new rule to come about. There was a great deal of potential for abuse, and some of the potential was undoubtedly explored and exploited.

Indeed, the new rule demonstrates the delay that can occur in rule making, as well as in other areas. The legal basis for the rule comes from legislation that was

passed in 2005. That legislation came from Congress, which is notorious for its painfully slow and plodding practices, which is even worse now given the division of power between the two chambers.

It has been almost seven years, during Bush's (W) second term, since Congress directed the establishment of a national registry of qualified medical examiners, with the corollary required removal from the registry of medical examiners who failed to meet or maintain the required standards.

Trolling for truckers: They are out there.

I somehow got put on a mailing list of a law firm which specializes in suing motor carriers. The gist of their message is that they are going to save world by suing truckers.

The initial rulemaking started in late 2008. The comment period closed in early 2009. Three years later, we get the national registry.

But the new rule will result in a reduction in the number of qualified medical examiners, at least in the short term. The surviving examiners will be required to undergo training. With fewer examiners, the cost is expected to go up. Some drivers will be required to seek out new medical examiners.

And time doesn't stop moving forward, since most drivers get a new certificate every other year, which eliminates the procrastination option. From the flip side, given the repeat business, there is great job security for the examiners.

That's it for now. Until next time, keep the cargo *rollin'*!

The Obligatory Disclaimer

This newsletter is for informational purposes, does not provide legal advice and does not create an attorney-client relationship.

Short Bio

Admitted to the state bars of Oregon, Alaska and Florida. Practicing law for over 30 years and emphasizing transportation law, business law and related matters and litigation.