

## **PITFALLS of DOT Examinations**

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In a number of circumstances, practitioners may be involved in providing physical examinations outside of the traditional physician-patient relationship. Some non-traditional settings for providing physical examinations include Fitness for Duty Exams, Department of Transportation "DOT" Physicals, Federal Aviation Administration Flight Physicals and Occupational Safety and Health Administration Compliance Exams. This article will focus on DOT examinations and certifications, but much of this information may apply equally to other non-traditional examination settings as well.

The DOT medical examination is designed to make sure that commercial drivers can safely perform the job. Commercial motor vehicle drivers are required to meet the medical standards of the Federal Motor Carrier Safety Administration (FMCSA), which are provided by the Department of Transportation. A DOT physical examination is conducted by a licensed examiner and may be issued for up to twenty-four (24) months, but the examiner can issue a certificate for under 24 months in order to monitor a condition like high blood pressure. In 1992, the regulations were amended to allow chiropractic physicians to perform DOT certification examinations as long as state licensure permits such examinations.

In 1999, the issue of DOT certifications made national attention after a bus driver who got into an accident which killed 22 passengers was found tested positive for marijuana and over the counter sleep medication. After this accident, the National Transportation Safety Board issued recommendations to the FMCSA to "prevent medically unqualified drivers from operating commercial vehicles" and "establish a medical oversight program for all interstate commercial drivers." As part of these recommendations, in 2005, the law was changed to require registration of DOT examiners which was implemented in 2014.

Physicians who perform DOT examinations should be aware that they face possible claims and lawsuits if the examination and certification are not done properly. Cases against examiners have not been frequent, however, medical conditions of drivers continually change and may be implicated in crashes involving trucks. Due to the substantial injuries and damages which may result from trucking incidents, claims or lawsuits may result in significant liability exposure. Liability in the context of DOT examinations may arise in a number of settings, including: 1) liability to third-parties for death or injury caused by an improperly certified driver, 2) liability to the Company who employs the driver based on a poorly performed examination (either to recover damages it has paid or for cost of work related injuries), 3) liability to the driver who is injured due to improper certification, or interference with employment due to improper withholding of certification, and (4) disability discrimination actions by drivers against employers or potential employers.

Several decisions dating back to 1976 have imposed liability on physicians or institutions in a number of settings where third parties are injured as a result of the

patient's conduct. The hallmark case of *Tarasoff v. Regents of the University of California*, 17 Cal. 3d 425, 551 P.2d 334, 131 Cal. Rptr. 14 (Cal 1976) was groundbreaking in recognizing a duty on the part of a physician to protect third party non-patients from injuries on account of a patient. Other cases illustrating this rule have proliferated over the years. In *Estate of Amos v. Vanderbilt University*, 62 S.W.3d 133, 138 (Tenn. 2001), the Court held that a hospital had a duty to the public to warn the patient of her possible exposure to human immunodeficiency virus. In *Osborne v. United States*, 567 S.E.2d 677, 684-85 (W. Va. 2002) the Court held that a third party could bring action against a health care provider for foreseeable injuries caused by negligent treatment of a patient. Similarly, in *Turner v. Jordan*, 957 S.W.2d 815, 820 (Tenn. 1997), the Court found that a psychiatrist owed a duty of care to a third person for violent acts of a mentally ill patient.

Liability can arise for a DOT examiner in the context of a truck collision resulting in injuries, death and/or property damage. While the laws vary from state-to-state, the crux of the claim is that the examiner owes a duty to the public to properly perform DOT physicals. If a driver is on the road driving when she/he should not have been due to a poor DOT examination and causes a wreck which kills or injures someone, or causes damages to property, a claim may exist. In *Wharton Transport Corp. v. Bridges*, 606 S.W.2d 521 (Tenn. 1980), the plaintiff employed the truck driver and brought suit against the examining DOT physician seeking to recoup approximately \$400,000 it paid to settle claims resulting from the driver leaving the highway and colliding with a parked car containing a family. The crash killed one child and caused severe injuries to other family members. The driver had a number of medical conditions which, prior to the collision, had been found to result in the driver being one hundred percent (100%) disabled. The DOT examiner did not identify the disabling conditions and certified the driver to operate a truck. The Court found that the accident was a reasonably foreseeable consequence of the DOT examiner failing to properly perform the examination. An interesting side note was that the examiner earned a large portion of his income from certifying DOT examinations.

Liability may also be claimed in connection with employment situations. An example of a case brought to recover workers' compensation payments on account of a deficient DOT examination is *Hollywood Trucking, Inc. v. Watters*, 385 Ill. App. 3d 237, 895 N.E.2d 3, 324 Ill. Dec. 3 (5th Dist.2008). In *Hollywood*, the trucking company sued the physician who performed a DOT examination of a driver it employed. The suit alleged negligence, fraud and fraudulent misrepresentation relating to the DOT examination and demanded to be reimbursed for workers' compensation benefits paid to the driver for conditions which it claimed pre-existed the employment. The Appellate Court ruled that part of the dispute had to be adjudicated in the Workers' Compensation Commission because of its exclusive jurisdiction.

Another example of an employment related claim is *Pittsman v. Perrone and Redi-Care Medical Center*, Lackawanna County, Ohio Case No. 11 CV 1235. The plaintiff was a long-haul trucker who applied for a job as a truck driver with Bolus Freight. He was sent to Redi-Care Medical Center for a DOT physical at the request of

Bolus. Pittman claimed that before completing the physical, Dr. Perrone called Bolus and refused to certify Mr. Pittsman as able to drive a commercial vehicle without a "skill performance evaluation." Plaintiff was not hired and later accepted employment elsewhere, incurring lost income, moving expenses, etc. The suit claimed that Dr. Perrone "wrongly interfered" with his potential employment relationship with Bolus Freight through "scandalous, defamatory and libelous statements." The case was eventually dismissed based on the statute of limitations running prior to the action being commenced, but illustrates the potential for claims from a denial of DOT certification.

For another example of an employment related claim arising out of a DOT examination witness *EEOC v. Texas Bus Lines*, 923 F.Supp. 965 (S.D. Tex. 1996), where a driver sued under the Americans with Disabilities Act after failing a DOT exam due to morbid obesity, (without doing any agility testing). Without a DOT certification, the driver was not hired and a lawsuit was filed. The medical evaluation was not consistent with DOT regulations. The court concluded that the bus company had notice that the DOT examination was not compliant and the driver should have been given a second examination. A similar claim was brought in *Dept. of Civil Rights v. A & C Carriers*, 403 N.W.2d 586 (Mich. App. 1987), where a truck driver made a disability claim against the employer. The trucker alleged that the doctor performing the DOT exam and another doctor who reviewed the records both agreed the driver's spine problems prevented DOT certification. The claim was not successful because the physical problems were directly related to the driver's ability to perform the job based on DOT standards.

Cases against DOT examiners are not filed every day, but the above are examples of claims which have been made arising out of situations where physicians are involved with patients who later cause harm to third parties or drivers and demonstrate that performing DOT examinations has the potential to expose the examiner to liability. The responsibility DOT places on examiners is significant and the proper performance of the DOT examination is important, not just for the safety of the public and drivers, but also for the economic well-being of the company which employs her/him, and the customers which are served by the trucking industry. In order to minimize the risk of claims, examiners must meticulously follow the DOT's examination regulations, maintain thorough documentation, and follow examination procedures which assure consistency. While nothing can prevent a claim or action from being pursued, we have attempted below to outline an approach which will reduce the chances a DOT examiner will have a claim or lawsuit filed against him/her.

All commercial drivers whose medical certificates expire on or after May 21, 2014 are required to be examined by an examiner listed on the National Registry of Certified Medical Examiners. The medical certificate is not limited to the current employer, so examiners should not consider whether the driver is employed by a familiar company or unknown employer.

Examiners performing driver medical exams are expected to understand fully the medical standards of the Federal Motor Carrier Safety Regulations (FMCSRs) and

related guidance. FMCSA must provide notification of certification before examiners are authorized to perform driver examinations. Examiners must now enroll, complete necessary training, and pass a certification test in order to be listed on the National Registry. To become a Certified Medical Examiner a practitioner must:

- Be licensed, certified, or registered in accordance with applicable State laws and regulations to perform physical examinations
- Register on the National Registry System and receive a unique identifier
- Complete the required training
- Pass the Medical Examiner’s certification test
- Report results of driver exams every month via the National Registry system
- Submit to periodic monitoring and audits
- Maintain certification by completing periodic training every five years and recertify by passing the ME certification exam every 10 years

When performing a DOT examination, the examiner must follow the federal medical standards and is expected to comply with the advisory criteria and consider other available guidance and reports. Frequently asked questions (FAQs) are provided to aid the examiner in making the certification determination and the FMCSA is reportedly developing an examiner handbook.

The FMCSRs list thirteen (13) conditions that can prevent driver certification. Detailed regulatory criteria statements on each of these conditions are available from the Federal Highway Administration (FHWA) and are summarized in the table below. Four (4) of these conditions always require denial of certification: insulin-treated diabetes mellitus, seizure disorders, significant vision deficits and significant hearing deficits. All examiners who perform these examinations should be familiar with the conditions that preclude driver certification, and they should be prepared to deal with common medical problems, such as hypertension, diabetes mellitus, and vision and hearing deficits.

**Summary of Federal Motor Carriers Safety Regulations**

<i>CONDITION</i>	<i>RECOMMENDATION</i>
Loss of foot, leg, hand or arm	The driver is medically disqualified unless a waiver has been obtained from the regional director of motor carriers. If the driver is otherwise medically qualified, the examining physician should check the statement “medically unqualified unless accompanied by a waiver” on the examination form and

<i>CONDITION</i>	<i>RECOMMENDATION</i>
	certificate.
Impairments of hand or lower extremity	Any significant limb defect that interferes with the ability to perform tasks associated with operating a motor vehicle is disqualifying or requires a waiver (e.g., fused or immobile knee or hip, partial paralysis, etc.).
Insulin-controlled diabetes	A driver taking insulin cannot be certified for interstate driving. However, a driver who has diabetes that is controlled by oral medications and diet may be qualified if the disease is well controlled and the driver is under medical supervision. Documentation from the driver's physician should be obtained. If diabetes is untreated or uncontrolled, certification should not be given.
Current diagnosis of cardiovascular disease	Any condition known to be accompanied by sudden and unexpected syncope, collapse or congestive heart failure is disqualifying. Conditions such as myocardial infarction, angina and cardiac dysrhythmias should probably be evaluated rigorously by a cardiologist before certification is issued. Holter monitors and exercise stress tests may be needed when a driver has multiple risk factors and other questions need to be answered. Tachycardia or bradycardia should be investigated to rule out underlying cardiac disease. Asymptomatic dysrhythmia with no underlying disease process should not be disqualifying.
Established history or diagnosis of respiratory dysfunction	If a driver has clear symptoms of significant pulmonary disease, basic spirometry and lung volume tests are recommended. If the forced expiratory volume in one second (FEV <sub>1</sub> ) is less

*CONDITION*

*RECOMMENDATION*

than 65 percent of predicted value, the forced vital capacity (FVC) is less than 60 percent of predicted or the ratio of FEV<sub>1</sub> to FVC is less than 65 percent, pulse oximetry should be performed. If pulse oximetry on room air is less than 92 percent, an arterial blood gas measurement is recommended. If the partial pressure of arterial oxygen is less than 65 mm Hg or the partial pressure of arterial carbon dioxide is more than 45 mm Hg, disqualification is recommended.

Hypertension

If the blood pressure is 160/90 mm Hg or lower, a full two-year certification is appropriate. If the blood pressure is higher than 160/90 mm Hg (either systolic or diastolic) but lower than 181/105 mm Hg, temporary certification may be granted for three months to allow time for the driver to be evaluated and treated. If the initial pressure is 181/105 mm Hg or higher, the driver should not be certified. Once treatment has brought a driver's blood pressure under control, certification should be issued for no more than one year at a time. Note that several readings should be taken over several days to rule out "white coat" hypertension. Significant target organ damage and additional risk factors increase the risk of sudden collapse and should be disqualifying.

Musculoskeletal, neurologic or vascular diseases

Depending on severity, any condition (physical, mental or functional) can be disqualifying if it can significantly impair a driver's ability to control a motor vehicle or to react to emergencies.

Epilepsy

A driver with a clinical diagnosis of epilepsy and recurrent seizures of any etiology should

*CONDITION*

*RECOMMENDATION*

never be certified. A driver who has had an isolated seizure or episode of syncope may be certified, but only if the driver is not taking medications and has been free of seizures for five years following an isolated idiopathic seizure and for 10 years following multiple seizures. Febrile seizures of childhood are not disqualifying. All questionable cases should be cleared by a neurologist.

Mental, nervous, organic or psychiatric disorders

Mental conditions that can affect judgment, perception of reality and reaction times may be disqualifying. When in doubt, the examining physician should have the driver obtain clearance from a psychiatrist or a neurologist. Medications required for mental conditions may be disqualifying if they can alter consciousness or reaction times.

Vision less than 20/40 in each eye

Vision must be at least 20/40 in each eye with or without correction. Certification can be given once vision has been corrected, but not until. The driver should be advised to have his or her eyes evaluated, obtain corrective lenses and then return for certification. Field of vision must be at least 70 degrees in each eye. Color vision must allow recognition of standard traffic signals (i.e., red, green and amber).

Hearing loss of more than an average of 40 dB in the best ear at 500, 1,000 and 2,000 Hz

The driver should pass a whispered voice test at five feet in at least one ear. A hearing aid may be worn for the test. If the test result is questionable, an audiogram is recommended. The better ear must not have an average hearing loss of more than 40 dB at 500, 1,000 and 2,000 Hz (to obtain an average, add the three decibel losses together and divide by 3).

<i>CONDITION</i>	<i>RECOMMENDATION</i>
Use of schedule I drugs and consciousness-altering drugs	Use of a schedule I drug or any other consciousness-altering substance, an amphetamine, a narcotic or any other habit-forming drug is cause for the driver to be found medically unqualified. Use of other prescription medications is not an automatic disqualifier; however, the condition being treated, the medications prescribed and the dosage level must be consistent with the safe performance of the driver's duties.
Current diagnosis of alcoholism	The term “current diagnosis” is meant to encompass those instances in which the physical and mental condition of the driver with alcoholism has not fully stabilized, regardless of the time element. If the severity or extent of the problem is uncertain, the examining physician may refer the driver to a substance abuse counselor for evaluation and clearance.

*Am Fam Physician.* 1998 Aug. 1;58(2):415-426.<sup>[1]</sup>

Any condition can be disqualifying if it is severe enough to affect a driver's ability to safely operate a truck. DOT examiners should also be aware of any sleep problems a driver may have, including obstructive sleep apnea, which often goes undiagnosed.<sup>[2]</sup>

There are Driver Exemption Programs available for patients with diabetes and vision problems under Sections 391.41(b)(3) and 391.41(b)(10).<sup>[3]</sup> Also, the FMCSA has a Skill Performance Evaluation certificate for drivers with missing or impaired limbs to drive CMVs across state lines if they have been fitted with (and are wearing) the right prosthetic device, and the driver can demonstrate the ability to drive the truck safely by completing on-and off-road activities.<sup>[4]</sup>

<sup>[1]</sup> <http://www.aafp.org/afp/1998/0801/p415.html>

<sup>[2]</sup> [http://www.sleepapneasolutions.ca/pdf/medicalprofessional/en/osa\\_in\\_truck\\_drivers.pdf](http://www.sleepapneasolutions.ca/pdf/medicalprofessional/en/osa_in_truck_drivers.pdf)

<sup>[3]</sup> <https://www.fmcsa.dot.gov/medical/driver-medical-requirements/driver-exemption-programs>

<sup>[4]</sup> <https://www.fmcsa.dot.gov/medical/driver-medical-requirements/skill-performance-evaluation-certificate-program>



The U.S. Department of Transportation's Federal Motor Carrier Safety Administration developed a Medical Review Board to provide advice and recommendations for updates on the current physical qualification standards.<sup>[5]</sup> Similarly, the FMCSA has a Medical Expert Panel which is a board of physicians, clinicians, and scientists who reviews evidence about a topic or question and drafts reports of their recommendations for the Medical Review Board to review.<sup>[6]</sup>

The medical examiner makes the final determination as to whether the driver meets FMCSA standards. FMCSA encourages examiners to use whatever tools or additional assessments are necessary based on the patient's medical history or findings from the physical examination. The Examiner should only execute the medical certificate after completing all required steps to determine that the driver is able to perform all driving and work-related tasks.

While cases are not often pursued against examiners, practitioners must understand their potential liability and how best to protect themselves. Regardless of the type of case, a healthcare professional's best defense to any claim is to perform the examination within the strict guidelines provided by the DOT and use the required practices on each case. Readers are also recommended to two (2) good articles referenced below on the DOT assessment of commercial motor vehicle drivers.

## References

- A. NP Hartenabaum, *The Commercial Motor Vehicle Driver Medical Examination: Practical Issues*, 81(8) Am Fam Physician., 975-80 (2010).
- B. Forrest Pommerenke et al, *DOT Examinations: Practical Aspects and Regulatory Review*, 58(2) Am Fam Physician, 415-426 (1998).

## Forms:

- A. <https://www.fmcsa.dot.gov/medical/driver-medical-requirements/medical-applications-and-forms>

## Recourses

- A. Federal Motor Safety Administration
  1. <http://www.fmcsa.dot.gov>
- B. DOT Rules and regulations
  1. <http://www.fmcsa.dot.gov/rules-regulations/rules-regulations.htm>
- C. Medical Examiner Handbook
  1. <http://nrcme.fmcsa.dot.gov/mehandbook/mehandbook.aspx>

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<sup>[5]</sup> <https://www.fmcsa.dot.gov/about-medical-review-board-mrb>

<sup>[6]</sup> <https://www.fmcsa.dot.gov/regulations/medical/medical-expert-panels>

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