

Obstacles with DOT Examinations

By Brian J. Niceswanger and Stephanie A. Preut

Doctors of Chiropractic who perform Department of Transportation (DOT) examinations face possible claims and lawsuits if the examination and certification are not done properly. The crux of these claims is that the examiner has an obligation to properly perform DOT physicals. Doctors who fail to do so may face significant liability including:

1. Liability to third-parties for death or injury caused by an improperly certified driver.
2. Liability to the company that employs the driver for a poorly performed examination (to recover damages or recoup the 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.
4. Disability discrimination actions.

Case Examples

In one case, a driver's employer brought suit against the examining doctor when the driver drove off the highway and collided with a parked car containing a family. The crash killed one child and caused severe injuries to other family members. Prior to the collision, the driver had a number of medical conditions that resulted in the driver being 100 percent disabled. The practitioner 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 improperly performed examination.

In another claim against a DOT physician examiner, a man who had experience as a long-haul trucker had applied for a job as a truck driver. The examiner refused to certify the driver without a "skill performance evaluation." The man was not hired and later accepted employment elsewhere, incurring lost income, moving expenses, etc. The suit claimed that the doctor "wrongly interfered" with his relationship with his employer by making "scandalous, defamatory and libelous statements."

Disability compliance is also an important consideration with DOT physicals. In one case, a driver went in for a DOT exam and was failed—without agility testing—due to morbid obesity. The company did not hire the driver, and he filed a lawsuit against the doctor who conducted the exam. Under DOT regulations, morbid obesity alone is not a disqualifying condition.



A Practitioner's Perspective

By Steven J. Gould, DC, DACBR

Many D.C.s are performing DOT examinations or are considering becoming certified to perform these exams. I recently became certified and find providing DOT examinations allows me to take advantage of my full scope of practice, gain patients, service existing patients and expand my referral relationships.

However, as the adjacent article clearly illustrates, problems with DOT exams can result when doctors short-change the process because they aren't aware of their full scope of responsibility in conducting these exams.

Even though the DOT says the examinations do not form a doctor/patient relationship, it is important to remember that D.C.s still have an ethical responsibility to take complete histories and conduct thorough physical examinations on the drivers.

These cases demonstrate that performing DOT examinations can expose a D.C. to liability for how they perform the exam, as well as any resulting injury or damages.

Reducing Risk

When performing a DOT examination, the examiner must follow the federal standards, comply with the advisory criteria, and consider other available guidance and reports. The doctor 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.

Doctors performing driver exams are expected to fully understand the standards of the Federal Motor Carrier Safety Regulations (FMCSRs) and related guidance. Before doctors perform driver examinations, they must enroll, complete necessary training, and pass a certification test to be listed on the FMCSR 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 and receive a unique identifier.
- Complete required training and pass the medical examiner certification test.
- Report results of driver exams performed every month via the National Registry system.
- Submit to periodic monitoring and audits.
- Maintain certification by completing additional training every five years and recertify by passing the certification exam every 10 years.

The FMCSR lists 13 conditions that can prevent driver certification. Four of these conditions always require denial of certification: insulin-treated diabetes mellitus, seizure disorders, significant vision deficits and significant hearing deficits.

Practitioners should be familiar both with conditions that outright preclude driver certification as well as those that may not, such as hypertension and some vision and hearing deficits. They also should be aware that any condition can be disqualifying if it is severe enough to affect a driver's ability to safely operate a vehicle.

A Doctor's Best Defense

While cases may not often be pursued against examiners, practitioners must understand their potential liability and how to protect themselves. A doctor's best defense is to perform these examinations within the strict guidelines provided by the DOT and use the best clinical practices possible.

This article serves as an overview of DOT exams and their risks to D.C.s. For the complete article, go to www.ncmic.com. 



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References

Hartenbaum (2010) *Am Fam Physician* 81(8): 975-80 [PubMed]

Pommerenke (1998) *Am Fam Physician* 58(2):415-26 [PubMed]

Resources

Federal Motor Safety Administration, www.fmcsa.dot.gov

DOT Rules and regulations, www.fmcsa.dot.gov/rules-regulations/rules-regulations.htm

Medical Examiner Handbook, <http://nrcme.fmcsa.dot.gov/mehandbook/mehandbook.aspx>