Owner-Operator Independent Drivers Association

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October 28, 2022

The Honorable Robin Hutcheson
Federal Motor Carrier Safety Administration
U.S. Department of Transportation
1200 New Jersey Avenue, SE
Washington, D.C. 20590

Re: Docket # FMCSA-2022-0111, "Qualifications of Drivers: Medical Examiner's Handbook and Medical Advisory Criteria Proposed Regulatory Guidance"

Dear Administrator Hutcheson,

The Owner-Operator Independent Drivers Association (OOIDA) is the largest trade association representing the views of small-business truckers and professional truck drivers. OOIDA has over 150,000 members located in all fifty states that collectively own and operate more than 240,000 individual heavy-duty trucks.

The Medical Examiners Handbook (MEH) and Medical Advisory Criteria is intended to provide information about regulatory requirements and guidance to medical examiners (ME) listed on FMCSA's National Registry of Certified Medical Examiners (National Registry) who perform physical qualification examinations of CMV drivers. In 2015, FMCSA withdrew the MEH because some of the information was obsolete or overly prescriptive in nature. This raised questions about the applicability of physical qualification standards MEs used during the certification process. In September 2017, the Medical Review Board began reviewing and updating the MEH to provide Medical Examiners information about regulatory requirements and guidance to consider when making physical qualification determinations in conjunction with established best medical practices. This process took nearly five years to complete, and the draft MEH finally published in the Federal Register in August 2022. Throughout this review, OOIDA and its members have recommended that the updated MEH provide clarity and consistency so all qualified individuals can receive medical certifications.

The MEH can accomplish this in various ways. The handbook should acknowledge that CMEs should not overrule personal medical physicians. The MEH should stress the importance of CMEs accepting the medical judgment of a driver's personal physician. Too often, CMEs ignore personal physician's judgments and deny medical cards to drivers. The handbook should also specifically state that a driver is entitled to a second opinion and that the CME must

acknowledge that fact if asked by the driver. From conversations with our members, we understand many CMEs believe it's against regulation for a driver to get a second opinion.

Most importantly, the updated MEH must differentiate between actual regulation and guidance. While the updated handbook attempts to better distinguish between regulations and guidance, there are many sections, such as obstructive sleep apnea, that remain overly reliant on recommendations instead of approved regulatory standards.

OOIDA submits the following comments and suggestions on the draft MEH. These changes would help ensure clarity and consistency throughout the document, which would benefit both CMEs and professional drivers.

- As part of the introduction, MEs should be aware of the critical role that professional truck driver's play in our global supply chain. For reference, President Biden has stated that truck drivers make the economy run –

    "If you all quit, everything comes to a halt. Think about it. I'm not joking. Think about it, things would come to a literal halt."

Secretary of Transportation Pete Buttigieg has also noted the essential service of the nation's truck drivers, saying, "If you enjoyed the food you ate for breakfast, the clothes you're wearing right now, or the device you might be using (to watch this event), you can thank a truck driver for getting that to you."

Medical Examiners should not only be aware of the role of the FMCSA and their own responsibility, but must also understand the importance of their patients.

- Section 1.4.1 – page 4, Medical Examination Report Form, MCSA-5875. "*MEs may provide a copy of the Medical Examination Report Form to the driver if requested*." MEs should provide a copy of the report form in all instances. This could be a hard copy or a digital copy, for the driver's reference in case a problem or discrepancy arises.

- Section 1.4.6 - Page 5, Driver Medication Form. This is an optional form. If it's mentioned in the MEH, then some MEs might make this form mandatory.

- Section 3.4 - Page 14, Medical Examiners Responsibilities, "Not to diagnose" should be emphasized. We've seen too many times when the ME will diagnose a driver's medical condition.

- Section 4.5.2 - Page 22, Medical Advisory Criteria for 49 CFR 391.41(b)(11). Some MEs think its regulation that a driver with hearing aids must carry batteries with them. Some MEs won't pass the exam until the driver brings in spare hearing aid batteries.

- Section 6.2.1.1.1 - Page 104, Driver Health History Review. *"It can also be used as a tool by MEs to request additional information from the prescribing licensed medical practitioner*

to determine if a driver is physically qualified under 49 CFR 391.41(b)(12).” The ME should not send the CMV Driver Medication Form to a driver’s prescribing practitioner without a driver’s consent.

- Section 6.2.1.1.3 - Page 108, Medical Examiner Determination. “*It is always best to wait until the examination has been completed to provide the driver with the qualification determination. However, if a driver does not agree with the outcome of the examination and an ME feels threatened, the following steps can be taken.”* This would be a great place to remind the MEs the driver has the right to get a second opinion.

- Section 4.8.3.6 - pages 51-52, Obstructive Sleep Apnea.

  The MEH should not link to the 2016 Medical Review Board (MRB) guidance on certification of drivers with moderate-to-severe obstructive sleep apnea (OSA). The inclusion of this guidance will only empower MEs to continue forcing needless OSA screening/testing upon experienced drivers. Additionally, publishing the MRB Guidance in the MEH would circumvent both legislative and regulatory policy implemented by Congress and FMCSA.

  Public Law 113-45, enacted in 2013, states, “The Secretary of Transportation may implement or enforce a requirement providing for the screening, testing, or treatment (including consideration of all possible treatment alternatives) of individuals operating commercial motor vehicles for sleep disorders *only if the requirement is adopted pursuant to a rulemaking proceeding*.” As requested by the Safe, Accountable, Flexible, and Efficient Transportation Equity Act; A Legacy for Users (SAFETEA–LU), the MRB does not have statutory authority to pursue such a rulemaking proceeding. The MRB provides information, advice and recommendations to the Secretary of Transportation and the Administrator of FMCSA on matters relating to all aspects of development and implementation of science-based physical qualification standards applicable to interstate CMV drivers. However, MRB *does not hold regulatory development responsibilities*, manage programs or make decisions affecting such programs.

  In 2016, FMCSA initiated a rulemaking process that requested data and information concerning the prevalence of OSA among individuals occupying safety sensitive positions in highway transportation. In August 2017, FMCSA withdrew this rulemaking based on the valuable information received in response to the proposed rulemaking and a series of public listening sessions. Therefore, the MRB guidance relating to OSA that has not been approved under DOT/FMCSA rulemaking proceedings should not be included in this document.

  The current medical examination form covers guidelines for MEs to check for sleep disorders. Proposing additional OSA screening protocols based on singular risk indicators is unnecessary, costly, and is not based on sound evidence. There are far too many instances where truck drivers are required to undergo screenings based on sole risk indicators, such as age, body mass index or neck size, when other comorbidity factors must be considered. Many drivers have undertaken the time-consuming screening process at the behest of MEs, when drivers should instead be relying upon their personal care physician who has a better understanding of their medical history. In the majority of cases, the expensive costs related to

these screenings are not covered by insurance and can take the driver off the road. These financial losses can be devastating for drivers and owner-operators who frequently must bear the financial burden of screening, testing and downtime themselves.

For owner-operators, all the costs associated with screening, evaluation, and treatment of OSA are passed on directly to them, many of whom do not have a health insurance plan that would pay for these costs, nor are covered under the Affordable Care Act or other health care plans.

Besides eliminating the MRB guidance from the MEH, other changes to this section include:

- Page 51, The MEH should reference the Apnea Hypopnea Index (AHI) to objectively determine what is moderate and severe OSA. We've seen instances where the ME made their own scoring, which did not coincide with the AHI. This would help reduce some of the diagnostic discrepancies among MEs.

- Page 51, The MEH should not recommend when a driver should be retested. That decision should be made between the treating provider and the driver. There will be unnecessary testing under this scenario.

- Page 51, The MEH should mention other treatment options besides CPAP such as oral appliances or other devices that might be more convenient to use in a CMV.

As currently written, the draft MEH has critical shortcomings that make it unfit to be returned to publication. Improvements must be made so that safe, experienced drivers can be certified to stay on the road. If necessary changes are not finalized, the MEH will fail MEs, drivers, and highway safety.

Todd Spencer
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