AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

THE FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION'S PROGRESS IN IMPROVING MEDICAL OVERSIGHT OF COMMERCIAL DRIVERS

(110–157)

HEARING

BEFORE THE

COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE HOUSE OF REPRESENTATIVES

ONE HUNDRED TENTH CONGRESS

SECOND SESSION

JULY 24, 2008

Printed for the use of the
Committee on Transportation and Infrastructure

U.S. GOVERNMENT PRINTING OFFICE

43–799 PDF WASHINGTON : 2008

For sale by the Superintendent of Documents, U.S. Government Printing Office
Internet: bookstore.gpo.gov Phone: toll free (866) 512–1800; DC area (202) 512–1800
Fax: (202) 512–2104 Mail: Stop IDCC, Washington, DC 20402–0001

COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE

JAMES L. OBERSTAR, Minnesota, *Chairman*

NICK J. RAHALL, II, West Virginia, *Vice Chair*
PETER A. DEFAZIO, Oregon
JERRY F. COSTELLO, Illinois
ELEANOR HOLMES NORTON, District of Columbia
JERROLD NADLER, New York
CORRINE BROWN, Florida
BOB FILNER, California
EDDIE BERNICE JOHNSON, Texas
GENE TAYLOR, Mississippi
ELIJAH E. CUMMINGS, Maryland
ELLEN O. TAUSCHER, California
LEONARD L. BOSWELL, Iowa
TIM HOLDEN, Pennsylvania
BRIAN BAIRD, Washington
RICK LARSEN, Washington
MICHAEL E. CAPUANO, Massachusetts
TIMOTHY H. BISHOP, New York
MICHAEL H. MICHAUD, Maine
BRIAN HIGGINS, New York
RUSS CARNAHAN, Missouri
JOHN T. SALAZAR, Colorado
GRACE F. NAPOLITANO, California
DANIEL LIPINSKI, Illinois
NICK LAMPSON, Texas
ZACHARY T. SPACE, Ohio
MAZIE K. HIRONO, Hawaii
BRUCE L. BRALEY, Iowa
JASON ALTMIRE, Pennsylvania
TIMOTHY J. WALZ, Minnesota
HEATH SHULER, North Carolina
MICHAEL A. ARCURI, New York
HARRY E. MITCHELL, Arizona
CHRISTOPHER P. CARNEY, Pennsylvania
JOHN J. HALL, New York
STEVE KAGEN, Wisconsin
STEVE COHEN, Tennessee
JERRY MCNERNEY, California
LAURA A. RICHARDSON, California
ALBIO SIRES, New Jersey
DONNA F. EDWARDS, Maryland

JOHN L. MICA, Florida
DON YOUNG, Alaska
THOMAS E. PETRI, Wisconsin
HOWARD COBLE, North Carolina
JOHN J. DUNCAN, JR., Tennessee
WAYNE T. GILCHREST, Maryland
VERNON J. EHLERS, Michigan
STEVEN C. LATOURETTE, Ohio
FRANK A. LOBIONDO, New Jersey
JERRY MORAN, Kansas
GARY G. MILLER, California
ROBIN HAYES, North Carolina
HENRY E. BROWN, JR., South Carolina
TIMOTHY V. JOHNSON, Illinois
TODD RUSSELL PLATTS, Pennsylvania
SAM GRAVES, Missouri
BILL SHUSTER, Pennsylvania
JOHN BOOZMAN, Arkansas
SHELLEY MOORE CAPITO, West Virginia
JIM GERLACH, Pennsylvania
MARIO DIAZ-BALART, Florida
CHARLES W. DENT, Pennsylvania
TED POE, Texas
DAVID G. REICHERT, Washington
CONNIE MACK, Florida
JOHN R. 'RANDY' KUHL, JR., New York
LYNN A WESTMORELAND, Georgia
CHARLES W. BOUSTANY, JR., Louisiana
JEAN SCHMIDT, Ohio
CANDICE S. MILLER, Michigan
THELMA D. DRAKE, Virginia
MARY FALLIN, Oklahoma
VERN BUCHANAN, Florida
ROBERT E. LATTA, Ohio

CONTENTS

Page

Summary of Subject Matter iv

TESTIMONY

Garber, M.D., M.P.H., M.S.M.E., Mitchell A., Medical Officer, National Transportation Safety Board 6
Kutz, Gregory D., Managing Director, Forensic Audits and Special Investigations, Government Accountability Office 6
Mcmurray, Rose A., Chief Safety Officer and Assistant Administrator, Federal Motor Carrier Safety Administration 6

PREPARED STATEMENTS SUBMITTED BY MEMBERS OF CONGRESS

Carnahan, Hon. Russ, of Missouri 35
Costello, Hon. Jerry F., of Illinois 36
Mitchell, Hon. Harry E., of Arizona 37
Oberstar, Hon. James L., of Minnesota 38

PREPARED STATEMENTS SUBMITTED BY WITNESSES

Garber, Mitchell A. 60
Kutz, Gregory D. 74
McMurray, Rose A. 95

SUBMISSIONS FOR THE RECORD

Committee on Transportation and Infrastructure, Oversight and Investigations Majority Staff, "Challenges in Verifying the Authenticity of Commercial Drivers' Medical Certificates" 43
Garber, M.D., M.P.H., M.S.M.E., Mitchell A., Medical Officer, National Transportation Safety Board, responses to questions from the Committee 64
Kutz, Gregory D., Managing Director, Forensic Audits and Special Investigations, Government Accountability Office:
Responses to questions from the Committee 85
"Certification Process for Drivers with Serious Medical Conditions," highlights of GAO-08-826, a report to congressional requesters 94
Mcmurray, Rose A., Chief Safety Officer and Assistant Administrator, Federal Motor Carrier Safety Administration, responses to questions from the Committee 102

U.S. House of Representatives
Committee on Transportation and Infrastructure
Washington, DC 20515

James L. Oberstar
Chairman

David Heymsfeld, Chief of Staff
Ward W. McCarragher, Chief Counsel

John L. Mica
Ranking Republican Member

James W. Coon II, Republican Chief of Staff

July 23, 2008

SUMMARY OF SUBJECT MATTER

TO: Members of the Committee on Transportation and Infrastructure

FROM: Committee on Transportation and Infrastructure Oversight and Investigations Staff

SUBJECT: Hearing on "FMCSA's Progress in Improving Medical Oversight of Commercial Drivers"

PURPOSE

The Committee will meet on Thursday, July 24, at 2:00 p.m. in room 2167 Rayburn House Office Building for a hearing on "FMCSA's Progress in Improving Medical Oversight of Commercial Drivers." The hearing will focus on the Federal Motor Carrier Safety Administration's (FMCSA) efforts to address eight outstanding National Transportation Safety Board (NTSB) recommendations and several congressional mandates to ensure that commercial driver's license (CDL) holders are medically fit to drive.

BACKGROUND

In 2007, National Highway Traffic Safety Administration (NHTSA) reported that "heart attack or other physical impairment of ability to act" was a "critical reason" in 3 percent (approximately 4,000) of all serious truck crashes in which the truck was assigned the critical reason for the crash.[1] Another 7 percent (5,000) were attributed to the driver being "actually asleep," which could have occurred for a variety of reasons including sleep apnea. Untreated sleep apnea causes a person to stop breathing repeatedly during sleep. If untreated, sufferers often experience daytime sleepiness and fatigue associated with significant levels of sleep disturbance. According to a recent study by the University of Pennsylvania and sponsored by the Federal Motor Carrier Safety

[1] Large Truck Crash Causation Study. According to NHTSA's estimate, there were approximately 120,000 fatal and injury crashes nationwide during the 33-month study period that involved at least one large truck; 141,000 large trucks were involved in those crashes. The study took place between April 2001 and December 2003.

Administration and the American Transportation Research Institute of the American Trucking Associations, 28 percent of commercial truck drivers have mild to severe sleep apnea.[2]

Over the past several years, NTSB has reported on serious flaws in the medical certification process of commercial vehicle drivers. NTSB has stated that these flaws can lead to increased highway fatalities and injuries for commercial vehicle drivers, their passengers, and the motoring public.

In 2001, NTSB recommended eight safety actions to improve the medical certification process, in response to a bus crash that killed 22 people in Louisiana. In 2003, NTSB placed CDL medical oversight on its "Most Wanted" list of safety improvements in the transportation industry. Although NTSB considers FMCSA's response to three of its recommendations "acceptable," all eight recommendations remain open and NTSB considers FMCSA's overall response to the issue of CDL medical oversight "unacceptable."

The recommendations were focused on the following five objectives:

- Establish a comprehensive medical oversight program for interstate commercial drivers.
- Ensure that examiners are qualified and know what to look for.
- Track all medical certificate applications.
- Enhance oversight and enforcement of invalid certificates.
- Provide mechanisms for reporting medical conditions.

Current Regulations for Medical Oversight of Commercial Drivers

Commercial vehicle drivers who operate in an interstate capacity are required to obtain a valid medical examiners certificate indicating that he or she is physically qualified to drive a commercial vehicle. The regulations require the driver to carry a copy of this certificate and be able to produce it if asked in a roadside inspection.

Some medical conditions are cause for outright disqualification, including those specified by regulation. For example, the regulations unequivocally disqualify a person with total hearing loss. However, for many serious medical conditions, including cardiovascular disease, a medical examiner may determine that the condition is sufficiently stabilized and certify the driver. Ultimately, certification is at the professional discretion of a licensed medical examiner of whether the nature

---

[2] Pack, A.I., Dinges, D.F., and Maislin, G. A Study of Prevalence of Sleep Apnea Among Commercial Truck Drivers. Report No. DOT-RT-02-030. Federal Motor Carrier Safety Administration, U.S. Department of Transportation, May 2002.

and severity of an individual's condition will likely affect the driver's ability to operate a commercial motor vehicle safely and is decided, in accordance with policy, on a case by case basis.

According to the regulations, individuals who have lost limbs may still qualify to operate a commercial vehicle if they are able to pass a State-administered Skills Performance Evaluation. The driver must demonstrate that the impairment does not interfere with his ability to safely operate a commercial vehicle.

Current FMCSA regulations allow licensed medical examiners to perform DOT medical examinations. These include Doctors of Medicine (MD), Doctors of Osteopathy (DO) Physician Assistants (PA), and Doctors of Chiropractic (DC). There is currently no registry of certified medical examiners. Currently, there is no program to train examiners how to conduct DOT-physicals or to certify that examiners are qualified to perform these exams. FMCSA's website advises commercial drivers to use the Yellow Pages and the Internet to locate a medical examiner.

FMCSA Has Made Initial Efforts to Improve Medical Oversight of CDL Holders

Medical Review Board. In August 2005, Congress passed the Safe, Accountable, Flexible, Efficient Transportation Act: A Legacy for Users, which required FMCSA to establish a Medical Review Board to provide "medical advice and recommendations on medical standards and guidelines for the physical qualifications of operators of commercial motor vehicles, medical examiner education, and medical research." In October 2005, FMCSA announced the establishment of a Medical Review Board (MRB) to begin reviewing all Federal Motor Carrier Safety Regulation medical standards. The MRB has held quarterly public meetings and has worked with research panels to examine medical issues affecting commercial motor vehicle drivers in order to develop new science-based standards and guidelines regarding a variety of medical conditions.

Linking the Medical Certificate with the CDL. In December 1999, the Motor Carrier Safety Improvement Act (MCSIA) directed the Secretary to, "initiate a rulemaking to provide for a Federal medical qualification certificate to be made a part of commercial driver's licenses."[3]

In November 2006, FMCSA issued a Notice of Proposed Rulemaking to merge information from the medical certificate into the CDL process. States are currently required to ensure that drivers meet FMCSA's standards for medical fitness, which they do through the licensing process. Some States require copies of the certificate, which they keep on file, but 25 States only require drivers to self-certify that they meet the Federal requirements. The proposed rule requires drivers to submit a copy of their most recent medical certificate to the State driver licensing agency. States will then enter information from the certificate into the Commercial Driver License Information System (CDLIS).[4] As a result, inspectors will be able to identify and fine drivers who do not have a current medical certificate on file. Also, States will downgrade a CDL if a certificate is more than 60 days out of date. According to FMCSA, the final rule will be issued soon.

---

[3] Public Law 106-159, The Motor Carrier Safety Improvement Act.

[4] The Commercial Driver License Information System contains data on commercial drivers as entered by state drivers licensing agencies. The system, accessible by motor carrier inspectors, enables inspectors to access information regarding licensing status.

Establishing an Examiner Registry. In August 2005, SAFETEA-LU [5] established a legislative mandate for the Secretary, acting through the Federal Motor Carrier Safety Administration to, "establish and maintain a current national registry of medical examiners that are qualified to perform examinations and issue medical certificates." FMCSA is developing a National Registry of Certified Medical Examiners (NRCME). The NRCME will require medical examiners to receive training and pass a certification test before being listed on the registry. The NRCME program is designed to produce trained, certified medical examiners who fully understand the medical standards in the Federal Motor Carrier Safety Regulations (FMCSRs). Medical examiners will be expected to understand how the standards relate to the mental and physical demands of operating a commercial motor vehicle. Once the NRCME program is established, FMCSA will require all interstate commercial drivers to obtain their medical certificates from a medical examiner listed on the NRCME. FMCSA estimates that approximately 40,000 medical examiners will be necessary to service the motor carrier industry. According to FMCSA, a Notice of Proposed Rulemaking (NPRM) has been drafted and will be issued soon.

Interest in certifying medical examiners to evaluate interstate commercial motor vehicle drivers dates back to at least 1978 when the National Highway Traffic Safety Administration commissioned a feasibility study on the issue. In 1999, MCSIA did not mandate that FHWA, or its successor[6] create a registry. Members of the Committee on Transportation and Infrastructure believed that FHWA was creating a registry voluntarily in fiscal year 2000.[7] At that time, the Committee "endorsed" the "prompt establishment" of such a program, asserting that, "a registry of such examiners will provide a reliable, national listing of medical professionals qualified to perform driver examinations."[8]

Several NTSB Recommendations Remain Outstanding

No Mechanism to Track Prior Applications for Medical Certification. FMCSA has still not created a process to review or track medical certification examinations or decisions. The lack of such a mechanism enables drivers with serious medical conditions to "doctor shop." Drivers with disqualifying medical conditions can go from doctor to doctor until they find one who will certify them as medically fit to operate a commercial vehicle. That doctor may not be aware of the DOT restrictions regarding certain medical conditions or the driver may not disclose that condition during the exam. NTSB has recommended that FMCSA set up a means for every prior application for a medical certification to be recorded and reviewed so that medical examiners can determine whether a driver they are examining has been previously denied a medical certificate.

Limited Protection Against Falsified Certificates. NTSB is also concerned that because the medical certificate form is not a controlled document, has no standard format, and can be freely reproduced, that there needs to be a means for States and inspectors to verify the certificates'

---

[5] Public Law 109-59, The Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users, Section 4116.

[6] Before FMCSA was formally created as a separate agency in 1999, motor carrier safety issues were managed by the Office of Motor Carriers within the Federal Highway Administration (FHWA).

[7] September 1999 Report by the Transportation and Infrastructure Committee to accompany H.R. 2679, the Motor Carrier Safety Act of 1999. "FHWA's Office of Motor Carriers intends to establish a voluntary medical registry program in fiscal year 2000."

[8] Ibid.

authenticity. NTSB believes, however, that FMCSA's proposed rule will allow inspectors to more easily determine whether a driver has a medical certificate and whether that certificate is still current.

GAO Study on Medical Oversight of Commercial Drivers

In March 2007, the Committee requested that GAO perform data matching with federal medical disability program databases to determine the number of current CDL operators receiving benefits for medical disability. While the fact that a driver qualifies for full medical disability pay does not mean he or she is medically unqualified to drive a commercial vehicle, it may be an indication that the individual has a serious medical condition. If such a condition exists, the individual should be evaluated appropriately during the medical certification process and monitored accordingly. It should be noted that not all serious medical conditions interfere with the safe operation of a commercial vehicle.

GAO's initial data match found that about 563,000 individuals – or 4 percent of all drivers in the DOT database[9], were receiving full medical disability. We asked GAO to investigate a sample of these cases and report to the Committee on whether these individuals had been medically reviewed in accordance with FMCSA's regulations and advisories. GAO profiled 15 of the most extreme cases which they believed illustrated where weaknesses in the medical oversight program enabled drivers to continue driving without appropriate medical oversight. The 15 cases are not representative of the commercial driver population or that portion of the driver population receiving medical disability.

Sample GAO cases:

- A Maryland bus driver with an aneurysm of the aorta and valvular heart disease used a forged medical certificate to obtain a CDL just 3 months after being declared completely disabled.
- A Virginia driver with an amputated leg was deemed medically fit after demonstrating that he could push the doctor across the room in a rolling chair.
- A Florida bus driver with chronic obstructive pulmonary disorder stated that he "occasionally blacks out and forgets things."
- A Minnesota driver with epilepsy had an agreement with his doctor that he would not drive a commercial vehicle if he felt "loopy."

In 10 of the 15 cases, the drivers either had no medical certificates or had fraudulent certificates. One driver did not disclose a medically disqualifying condition. In four cases, the medical examiners were not familiar with the requirements for driver qualifications – one doctor did not know complete hearing loss disqualifies a commercial driver. Another did not know about the requirement for a Skill Performance Evaluation for an amputee.

GAO did not attempt to assess the propriety of FMCSA's standards for any medical conditions.

[9] FMCSA's database includes approximately 13 million records. Because it is an archival database, many records represent inactive CDLs, or CDLs that have expired.

WITNESSES

Dr. Mitchell A. Garber, M.D., M.P.H., M.S.M.E.
Medical Officer
Office of Research and Engineering
National Transportation Safety Board
Atlanta, GA

Mr. Gregory D. Kutz
Managing Director
Forensic Audits and Special Investigations
United States Government Accountability Office
Washington, DC

Ms. Rose A. McMurray
Chief Safety Officer
Federal Motor Carrier Safety Administration
United States Department of Transportation
Washington, DC

HEARING ON FMCSA'S PROGRESS IN IMPROVING MEDICAL OVERSIGHT OF COMMERCIAL DRIVERS

Thursday, July 24, 2008

HOUSE OF REPRESENTATIVES
COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE,
Washington, DC.

The Committee met, pursuant to call, at 4:08 p.m., in Room 2167, Rayburn House Office Building, the James L. Oberstar [Chairman of the Committee] presiding.

Mr. OBERSTAR. The Committee on Transportation and Infrastructure will come to order. Apologies to our witnesses and to all who intended to be in attendance two hours ago, but business on the Floor involving the Committee, both legislative business of other Committees and our bridge bill carried over from last night, required the Committee and myself, as Chair, especially, to be there. We apologize for these delays. We will pursue the hearing with, at the outset, deep appreciation to all the witnesses who are here to testify and to answer questions on the very serious issue of medical oversight of commercial drivers.

I am disappointed that Administrator Hill is unavailable to testify on this serious issue. It is curious that the Administrator of FMCSA, Federal Motor Carrier Safety Administration, was available and prepared to answer questions from a reporter earlier this week, but not from the Committee. It has happened occasionally, but rarely over the 34 years I have served in the Congress and on this Committee, and I can only speculate as to why, and I won't do that publicly.

Medical oversight of commercial drivers and the impact of the consequences of the problems we are going to explore today on safety on our roads is an issue that has troubled us for years. In 1999, at the insistence of the then Clinton administration, the Department of Transportation established the Federal Motor Carrier Safety Administration. Their goal was to take the Office of Motor Carrier out of the Federal Highway Administration and establish it at the same level of standing and authority and influence as the other modal administrations: the FAA, the Federal Maritime Administration, Federal Transit Administration, Federal Highway Administration, among others.

The legislation to do so was discussed with the Republican majority of the Committee and the Ranking Member, which I was at the time, on the appropriate way to establish this new administration and how it should be constituted, and we spent quite some

time, in advance of introducing legislation, to craft the proposal. I want to read the opening sentence of the Act. I thought I had misplaced it, but it is right here. ''The administrator shall consider the assignment and maintenance of safety as the highest priority.''

Not an afterthought, not in passing, but the highest priority. Those are not new words in Federal law; they are taken from the opening paragraph of the legislation establishing the Federal Aviation Administration in 1958 under the Eisenhower administration, from the old Civil Aeronautics Authority.

Safety in aviation shall be maintained at the highest possible level. What that has come to mean over the years is not only the level of safety that the airlines choose to provide, not the level they can afford, but the highest possible level. If we are going to establish an agency of the Department of Transportation whose role is to maintain safety in commercial driving, then it ought to be a very high standard.

Unfortunately, we have not made much progress. The deaths from crashes involving large trucks from the founding of the FMCSA has stayed roughly the same. A year and a half ago that was 4,995 individuals killed in car-truck crashes. That was about the same four years before we established this new modal administration.

The safety effects of failure to act are tangible and measurable. In 2007, the National Highway Traffic Safety Administration reported that heart attack or other physical impairment—in their words—was a critical factor in some 4,000 serious truck crashes. In July 2000, a Tennessee State trooper was killed after a truck driver with a long history of severe obstructive sleep apnea, a condition in which people continue to wake during their sleep or sleep very lightly, collided with the officer's patrol car and exploded on impact. And it wasn't the first incident for which that truck driver was responsible. Three years earlier he blacked out at the wheel, striking and seriously injuring two Utah State troopers. By failing to report his history of sleep apnea to his doctor, the driver was able to obtain four consecutive medical certificates in that three-year period.

The National Transportation Safety Board has made eight specific recommendations to improve medical oversight of commercial drivers and Congress has given the Administration very specific mandates, but progress has been just about negligible. As the NTSB will testify today, the FMCSA's commercial driver medical oversight system is no more robust or effective than it was nearly 10 years ago.

One of the Safety Board's recommendations in 2001 was to establish a system in which critical medical information—such as this particular truck driver's sleep apnea condition—would be available to examiners who are performing DOT medical exams, yet no progress has been made on that recommendation.

Another area of failure to make progress is helping in the detection of fraudulent medical certificates. Our Nation's highest safety authority, the NTSB, has criticized the medical certificate form because it is not a controlled document; it has no standard format; it can, and often is, freely reproduced. A dishonest driver can easily download the form from FMCSA's Web site and fill it out himself.

That is not the way it is supposed to be done. There is no mechanism in existence today for inspectors to verify the authenticity of a driver's card.

We are releasing a report today prepared by Committee staff, in very great detail, reviewing the issue of invalid medical cards. Last year, by way of background, the Committee staff collected some 600 medical cards from drivers at truck weigh stations and they attempted to verify with medical examiners who issued the cards, or allegedly issued the cards in some cases. The report documents 30 cases, 5 percent of the sample, where either the medical examiner didn't exist or the medical examiner indicated that the signature of that person had been forged or changed, adulterated. And I enter that report into the Committee hearing record.

The FMCSA efforts to address NTSB's recommendation have been grudging and painstakingly slow. The legislation mandated that FMCSA merge drivers' medical information with the commercial driver license data system. Not too hard to do. Should have been done within a year 10 years ago. No final rule.

Last year, Administrator Hill appeared before the Committee in July, told the Committee that they were in the process of "finalizing the final rule." Well, I hope Ms. McMurray can provide a more realistic time line for that final rule. It is over a year. Why should it take so long? And one in which we will hold the Administration accountable.

Interest in creating a registry of certified medical examiners dates back to at least my third term in Congress, when NHTSA commissioned a feasibility study on this issue. In 2005, the current transportation law, SAFETEA-LU, established a mandate for the Motor Carrier Safety Administration to create a national registry of certified medical examiners. They are still studying and researching the issue. They have had 40 years to study and research this issue, going back to its predecessor organization. We need action. Because there is no such registry, there are untrained and untested examiners conducting these medical exams.

The GAO released a report revealing results of the work that Chairman DeFazio and I requested on the medical certification process for drivers with serious medical conditions. It provides some very sobering—I would say even shocking—examples of what can happen when examiners aren't up to speed on the medical requirements of the Motor Carrier Safety Administration, and we will hear more about that from Mr. Kutz.

I want to say a good word for the trucking industry. They have opened their doors. They have employed persons with illnesses and disabilities. They have been welcoming. They have worked with people in all stages of physical conditions. If we allowed only those people with good health to drive, maybe we would solve most of our highway problems on congestion and safety, but we must make those allowances in a way that doesn't compromise public safety. There are too many shortcomings, defects, omissions, failures in the FMCSA medical certification program to protect the traveling public adequately, and I look forward to hearing the testimony today on those issues.

I am happy to yield to the distinguished gentleman from Tennessee, Mr. Duncan.

Mr. DUNCAN. Well, thank you very much, Mr. Chairman. I too want to welcome the witnesses to the hearing today, but first I want to congratulate you on a big week, the passage of two very important bills, the Aviation Safety Bill and, of course, just a few minutes ago the Bridge Bill, two very fine bills.

I have always been very proud to serve on this Committee, and I think just about every week something really significant goes on in this hearing room, frequently on the Floor of the House. In fact, in 1990 and again in 1994, I was given an opportunity to move to two other very important Committees, and I think some people were surprised that I didn't, but I have always enjoyed service on this Committee, and one of the reasons that I respect this Committee so much is because of my great respect for you.

But this hearing today, I apologize to the witnesses also because it has been delayed so long, but as the Chairman has always emphasized, safety is the highest priority of this Committee in all of the fields with which we deal. Of course, common sense tells you that a commercial driver's health and physical condition is very, very important and may significantly impact not only his or her ability to drive safely, but other people, of course, other men, women, and children on the highways.

There are 715,619 commercial motor carriers registered by the Federal Motor Carrier Safety Administration. Unfortunately, a couple months ago we heard from the American Trucking Association that 935 trucking companies had gone out of business in just the first quarter of this year. And that survey only counted trucking companies with five trucks or more. But, at any rate, this translates to more than 4 million individuals who hold commercial driver's licenses.

While States issue these CDLs, FMCSA is charged with regulating the safety of all commercial motor vehicles engaging in interstate commerce. Under this charge, FMCSA is responsible for issuing the medical qualification standards for commercial vehicle drivers.

In 2001, following a very tragic motorcoach accident in Louisiana, the National Transportation Safety Board made eight recommendations to prevent medically unqualified drivers from operating these commercial vehicles. FMCSA has a number of initiatives underway to address these recommendations and improve medical oversight of commercial drivers, and I think we will hear a little bit about the progress that has been made on those recommendations.

Additionally, the GAO has recently released a report on an investigation in which the GAO investigators targeted 15 extreme cases where CDL holders were not receiving appropriate medical oversight. This report could possibly be seen by some to imply a broader problem in the CDL population, but, in fact, the report makes it clear that these 15 cases are not representative of the commercial driver population or individuals receiving medical disability benefits.

In fact, like Chairman Oberstar, I will say a good word for our trucking industry. It is the best in the world overall and there is tremendous pressure and incentive on trucking companies to hire good, safe, healthy drivers because, of course, they can have major

lawsuits if they didn't. But even though we have the best trucking industry and the best transportation system in the entire world, you always, every individual and every company should always be trying to improve and make things better.

So I think that is part of what this hearing is about and I look forward to hearing the testimony of the witnesses. Thank you.

Mr. OBERSTAR. I greatly appreciate the gentleman's thoughtful comments and I return the compliment. The gentleman from Tennessee served as a judge before election to Congress and has conducted himself with judicial demeanor in all the undertakings of the Committee, and I have no greater respect than for the time he served as the Chair of the Aviation Subcommittee at the turning point of majority from Democrats to Republicans, and the gentleman from Tennessee conducted the work of the Committee in a most distinguished and productive and effective manner, and we are grateful to him for his service.

Mr. Coble.

Mr. COBLE. Thank you, Mr. Chairman. I won't take the entire five minutes. I want to reiterate what you and the gentleman from Tennessee said, indicating that safety is the utmost importance on our Nation's roadways, and many of us have said repeatedly it is and should remain our top priority.

And not unlike the Chairman and the Ranking Member, I want to commend our witnesses for your durable patience while you have been waiting for us to come back.

At the same time, however, I do have some thoughts I would like to share regarding the topics before us today, Mr. Chairman.

This GAO report focuses on persons who fraudulently obtained a commercial driver's license, CDL, while also receiving various forms of disability benefits. That said, I think it is equally important that we acknowledge those with medical conditions who have obtained a CDL by following the letter of the law.

Generally speaking, Mr. Chairman, it is my belief that the determination of a person's medical fitness and ability to obtain a CDL should be made on a case by case basis. In addition to maintaining equality for those who do have medical impairments, this also ensures safety, because those who have knowledge and expertise to determine if a person can safely operate a CDL vehicle are consulted.

Further, I would like to simply state that I disagree with the notion that a blanket ban should be enacted on various medical conditions. I do so because I believe these decisions should be based upon an individual's medical condition as determined by qualified medical providers.

I would like the record to note that I don't condone the actions of those who have abused or committed fraudulent acts to circumvent the medical review process. Clearly, there are loopholes that should be closed to prevent these types of occurrences the GAO report identifies. At the same time, Mr. Chairman, I believe we should also focus on ensuring that the medical review process is thorough, diligent, and stringent so that it will provide clear and concise parameters to ensure safety on our Nation's highways.

I thank you, Mr. Chairman and the gentleman from Tennessee, for having called this hearing. I think it is of the utmost importance, and I yield back.

Mr. OBERSTAR. I thank the gentleman from North Carolina. He knows whereof he speaks about safety, having served in the U.S. Coast Guard, our preeminent maritime safety agency.

Before we proceed with witnesses, I want to welcome to the hearing our newest Member, making Ms. Richardson feel better. She was our newest Member until just now, when Congresswoman Donna Edwards of Fort Washington, Maryland, was elected in June and assigned to our Committee.

She is one of six children born to a military family, received an undergraduate degree from Wake Forest University. She was one of six African-American women in her graduating class. Received a law degree from Franklin Pierce Law Center in New Hampshire, where she also became a mother. Before election to office, she was the Co-founder and Executive Director of the National Network to End Domestic Violence, where she earned national recognition for efforts leading the fight to help pass the Violence Against Women Act of 1994.

My middle daughter, Annie, would very particularly appreciate and I am going to send her your bio. She worked in a program on violence against women and defended women from domestic violence. She worked on the Campaign Finance Reforms for Public Citizen and Center for New Democracy.

Welcome to the Committee. The gentlewoman is recognized.

Ms. EDWARDS. Thank you, Mr. Chairman. Thank you. I appreciate being here and I am looking forward to serving with you.

Mr. OBERSTAR. Since this is an oversight hearing, we will ask witnesses to rise. Raise your right hand. Do you solemnly swear the testimony you will give before this Committee in matters now under consideration will be the truth, the whole truth, and nothing but the truth, so help you God?

[Witnesses answer in the affirmative.]

Mr. OBERSTAR. You are sworn in.

We will begin with Mr. Garber, Medical Officer for the National Transportation Safety Board. Dr. Garber, excuse me.

TESTIMONY OF MITCHELL A. GARBER, M.D., M.P.H., M.S.M.E., MEDICAL OFFICER, NATIONAL TRANSPORTATION SAFETY BOARD; GREG KUTZ, MANAGING DIRECTOR, FORENSIC AUDITS AND SPECIAL INVESTIGATIONS, GOVERNMENT ACCOUNTABILITY OFFICE; ROSE MCMURRAY, CHIEF SAFETY OFFICER AND ASSISTANT ADMINISTRATOR, FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION

Dr. GARBER. Good afternoon, Chairman Oberstar, Ranking Member Duncan, and Members of the Committee. Thank you for allowing me the opportunity to present testimony on behalf of the National Transportation Safety Board regarding improving medical oversight of commercial drivers. It is a privilege to represent an agency that is dedicated to the safety of the traveling public.

In May 1999, on Mother's Day, in New Orleans, a commercial driver lost consciousness while driving a motorcoach on an interstate highway, left the roadway, and crashed into an embankment,

killing 22 passengers and seriously injuring the driver and 15 additional passengers. The driver was found to have multiple known serious medical conditions, including kidney failure and congestive heart failure, and was receiving intravenous therapy for three to four hours a day, six days a week.

The Board has investigated many other accidents involving commercial drivers with very serious preexisting medical conditions that had not been adequately evaluated. Just a few examples of these include a nearly blind school bus driver in Montana who apparently did not see an oncoming train that struck the bus and killed two students; a New York City transit bus driver with a seizure history who had a seizure while driving the bus, seriously injuring a cyclist and killing a pedestrian; a tractor trailer driver with unevaluated sleep apnea and untreated thyroid disease who ran over and killed a Tennessee State trooper driving in his highway patrol vehicle with lights flashing; and an alcohol-dependent tractor trailer driver whose excessive speed resulted in a load breaking free and striking a school activity bus in North Carolina, killing the school bus driver and a child.

The Safety Board is not surprised by the findings of the General Accountability Office study. Their findings mirror our own. It is important to note that the Board does not maintain statistics that would allow us to estimate the overall prevalence of such conditions in accident-involved populations or in the general driver population, butI can tell you that it is actually unusual in our accident investigations to find a commercial driver for whom there are not at least some questions regarding medical certification. This is not to say that the drivers' conditions always cause the accident, but finding these undocumented and unevaluated conditions in commercial drivers is concerning and often alarming. In many cases these conditions, if they had been appropriately evaluated, treated, and monitored, would not prevent the safe operation of a commercial vehicle. Unfortunately, for a variety of reasons, no such evaluation, treatment, or monitoring occurred in many of the cases we investigated.

As a result of observing serious deficiencies in the oversight of commercial driver medical certification in several of our investigations, the Safety Board issued recommendations to the FMCSA in 2001 to develop a comprehensive medical oversight program for interstate commercial drivers. The Board suggested that such a program include qualified and properly educated examiners, updated and available regulatory and non-regulatory guidance, review and tracking of medical exams, improved enforcement of certification requirements, and appropriate mechanisms for reporting unfit drivers.

The Board's recommendations specify a comprehensive oversight program because we feel that only by addressing this issue in a systematic fashion can a truly effective program of oversight be developed. A piecemeal approach to the problem may result in gaping deficiencies that will continue to permit unqualified drivers to operate on our Nation's highways.

In 2003, because of the critical importance of this issue and the lack of substantive progress on the recommendations, this issue was placed on the Board's Most Wanted List of Transportation

Safety Improvements, and it has remained there ever since. Although the FMCSA has put in place a Medical Review Board and taken certain other preliminary actions in response to congressional mandates, there are still areas in which absolutely no measurable progress has been made. The system is no more robust now than when the New Orleans accident occurred nearly 10 years ago.

The majority of recommendations in this area are currently classified as ''open—unacceptable response,'' and the current classification of the entire issue area is considered to represent overall unacceptable progress. To paraphrase a previous Safety Board Chairman, it is not that the current system is broken so much as that no viable system of medical oversight of commercial drivers currently exists. That is as true now as it was when the recommendations were issued. The FMCSA does seem to be making limited progress towards the type of comprehensive oversight system envisioned by the Safety Board, but it remains to be seen whether such a system will in fact be completely developed.

This concludes my prepared statement, and I will be happy to answer any questions.

Mr. OBERSTAR. Thank you very much, Dr. Garber, for your statement and for the very thorough work that NTSB has done, as usual, on this entity. I hold the NTSB in the highest regard and always have for its superb contribution to safety.

For GAO, Mr. Kutz.

Mr. KUTZ. Mr. Chairman and Members of the Committee, thank you for the opportunity to discuss commercial drivers.

In May of 2005, a truck collided with an SUV in Kansas, killing a mother and her 10-month-old baby. The driver had not disclosed his severe sleep apnea condition to the physician that issued the medical certificate. Today's testimony highlights our investigation of commercial drivers with serious medical conditions. My testimony has two parts: first, I will discuss our macro analysis of driver data and, second, I will discuss several cases that we investigated.

First, we performed data mining of drivers receiving full Federal disability benefits. We fully support individuals with serious medical conditions, including our wounded warriors, receiving the training and certifications necessary to safely operate commercial vehicles.

However, some medical conditions can and should disqualify an individual from driving. As shown on the monitor, we found that 563,000 individuals with licenses were receiving full Federal disability benefits. Recognizing that some of these licenses were inactive, we performed additional analysis for 12 States. For these States, we found that 85,000 individuals had their licenses issued after their 100 percent Federal disability determination. Because a determination of medical fitness is subjective, it is impossible to conclude how many of these drivers should not be on the road. However, because they are receiving full disability benefits, it is likely that their medical conditions are severe.

Second, to put a face on this issue, we investigated 15 cases from our overall data mining results. For these cases we found that careful medical examinations did not occur. The following three themes help explain why medically unfit drivers are on the road.

First, self-certification. Twenty-five States allow drivers to self-certify their medical status. Unfortunately, as our case studies clearly show, people lie. The monitor shows an example of an application for Michigan. As you can see, the only evidence necessary to support medical fitness is a check mark in the yes box.

Second, we found inadequate medical examinations. For example, one driver was certified even though his deafness should have disqualified him. And, third, we found fraudulent documentation. We found cases where drivers had forged the medical examiner's signatures.

The following cases highlight these themes. First, a Virginia bus driver with multiple sclerosis was driving without a medical certification. This driver was cited as being responsible for a three vehicle accident that injured 16 individuals. A Florida driver with multiple sclerosis and fatigue had no medical certification. She told us that she drives a truck hauling circus equipment to shows.

A Florida bus driver with breathing problems told us that he occasionally blacks out and forgets things. He also was driving with no medical certification. A Minnesota driver prescribed anti-seizure medication which, according to DOT guidance, disqualifies him, was incorrectly certified. The driver told us that he had agreed with the medical examiner that he would not operate a commercial vehicle if he felt loopy. And, finally, a Maryland bus driver with serious heart disease forged the medical certification that you see on the monitor. The medical examiner whose name was forged told us that this individual was not medically fit to drive.

In conclusion, nobody knows the extent of medically unfit commercial drivers. However, our investigation provides an inside look at how individuals that should not be on the road can beat the current system. These drivers pose a risk not only to themselves, but to the traveling public.

Mr. Chairman, this ends my statement. I look forward to your questions.

Mr. OBERSTAR. Thank you very much for your statement and for the complete documentation from GAO, which is, to me, shocking, revealing, compelling.

Ms. McMurray for FMCSA. Welcome.

Ms. MCMURRAY. Thank you. Chairman Oberstar and Members of the Committee, thank you for the opportunity to discuss the Federal Motor Carrier Safety Administration's medical program and to highlight the agency's progress toward improving oversight of the medical certification process for commercial motor vehicle drivers. FMCSA is pursuing initiatives to strengthen this program which will enable us to further engage the diverse community that examines drivers for medical fitness for duty.

FMCSA recognizes the challenges of ensuring that the more than 6 million commercial truck and bus drivers are qualified medically to operate safely in interstate commerce. The sheer size of this driver population will require thousands of certified medical examiners to evaluate drivers for their fitness for duty.

Many of you have seen the news this week and may be troubled by reports of medically unfit drivers, images of crashes resulting from drivers with health problems, and a system too overwhelmed and outmoded to keep up with the volume. I would like to assure

you and this Committee that FMCSA's medical program is focused on identifying and promoting effective program measures that will make America's roadways safer.

We acknowledge that improvements can and must be made to our program. The agency actively engages with the medical community, drivers, States, and trucking and bus companies to create a sound medical certification process. As we move forward with our proposed rules and with our other program changes, we will continue to work with our stakeholders to develop a fair, science-based medical oversight program.

In the past several years, FMCSA has worked closely with the National Transportation Safety Board to address its medical recommendations. Four of the NTSB's eight most wanted recommendations directed to us will be addressed when the agency implements the medical certification and the national registry rules. These two rules, currently under review within the department, are expected to be released in the next several months and will form the cornerstone of FMCSA's improved medical program. The remaining four recommendations will be addressed in part not only by these proposed rules, but as well by other medical program initiatives underway or in the planning stages.

In addition, Mr. Chairman, in its report released this week, the Government Accountability Office pointed to case studies where drivers were able to receive commercial driver's licenses while avoiding or subverting the medical certification process. While not wanting to address certain limitations of the report in this statement, FMCSA is concerned about the implication that the cases GAO cites are indicative of the problems encountered among the whole of the regulated driver population.

As with all of our programs, we have evaluated the medical program and where we found deficiencies are addressing them. For instance, in the past, FMCSA had a limited communication strategy with the medical examiner community. Also, we had insufficient clinical expertise to help direct our medical program.

In the last several years, the agency has partnered aggressively with the medical community, engaging it in the first national study of commercial driver medical examiners. This effort will support the development of a national education and training program. Additionally, we have hired prominent doctors and nurses with occupational medicine specialties to advise the agency and we have improved our capability to provide information to the public by using web-based and other forms of communication to interact with hundreds of drivers and health care professionals.

FMCSA's enforcement program, conducted with our State and local partners, is supported by conducting compliance reviews and roadside inspections of drivers and vehicles. These inspections and compliance reviews provide important information on driver and carrier adherence to the Federal Motor Carrier Safety regulations and our medical program. The agency uses these inspections and reviews to better focus our enforcement assets and our medical certification oversight.

SAFETEA-LU provided the agency with expanded authorities for our medical program. We established the Department of Transportation's first statutorily mandated medical review board, which ad-

vises the agency on the medical adequacy of our existing standards. From a nationwide pool of applicants, the agency selected five highly qualified physicians representing different medical specialties to perform this work. Over the past several months, these physicians have made significant science-based recommendations on how to improve our current body of medical standards. FMCSA values the work of the Board in helping us strengthen our commercial driver medical standards.

Mr. Chairman, we expect the driver medical certification process to increase in complexity in the coming years. We are committed to establishing and maintaining effective medical standards based on the best available scientific evidence. The agency works hard to ensure that drivers operating trucks and buses in interstate commerce do so safely. As priorities change and our Nation's transportation needs evolve, FMCSA seeks to balance the desire for commercial drivers to work without compromising their safety and that of the traveling public.

Thank you for the opportunity to testify today about this important issue. I would be happy to respond to any questions you might have.

Mr. OBERSTAR. Thank you for your testimony.

Dr. Garber, what is the level of compliance by FMCSA, Federal Motor Carrier Safety Administration, with recommendations from the Board? The Board rates various agencies, has done for many years on a percentage of compliance. What is their percent of compliance?

Dr. GARBER. With regard to the recommendations on medical certification and oversight, the majority of those recommendations have been in an unacceptable status since we initially received a response from FMCSA. The entire issue area is in an unacceptable status as per our most wanted list review on an annual basis.

Mr. OBERSTAR. And how does that compare with the other modal administrations? You may not be able to answer that question right off the top of your head.

Dr. GARBER. It would be difficult to make that comparison because it would depend on the issue areas that we were discussing. We can certainly provide you that information in written form.

Mr. OBERSTAR. I have followed this matter for 30-plus years, in fact, longer than that, 1967, when the Department of Transportation was created and the Board was created, and in 1970 when we moved it out of the Department of Transportation, established as an independent Safety Board, and I think this would rank among the lowest, if not the lowest, in compliance with Board recommendations.

Dr. GARBER. Mr. Chairman, our overall compliance rate runs between 80 and 90 percent. So as a comparison with our overall compliance rate, yes, this would be one of the lower rankings in comparison to that.

Mr. OBERSTAR. And you have listed eight issues, and I think they are reasonable ones, they are reasonable targets to achieve. They all come into a general category of comprehensive medical oversight. What has been the reaction from FMCSA to Board recommendations on those eight issues?

Dr. GARBER. In general, the reaction has been positive in that they have agreed that action is necessary. What the Board has been challenged by is the failure to observe any actual changes in the system as it exists and by the repeated dates and targets that have passed for the completion of certain aspects of their responses to these recommendations.

Mr. OBERSTAR. I know when the Board deals with the FAA you constantly remind the agency of their need to comply. Have you done the same with FMCSA?

Dr. GARBER. Certainly on an annual basis. This is reviewed every November at our Most Wanted annual meeting on Federal issues that have reached that list. In each case prior to that meeting we have requested updates from the agency as to their progress, and in each case the Board has been unsatisfied with the progress that we have seen.

Mr. OBERSTAR. And that has been done at the Board level, Board members and with the participation of the chairman.

Dr. GARBER. That is correct, in public meetings.

Mr. OBERSTAR. Are you dismayed by the response?

Dr. GARBER. I think it would be correct to say that the Board Members have consistently expressed their dissatisfaction with the responses that have been received.

Mr. OBERSTAR. How many of the tragedies listed—Buffalo; Central Bridge, New York; Jackson, Tennessee; Bay St. Louis, Mississippi; home of one of the Members of our Committee, Mr. Taylor; North Hudson, New York; Franklin, North Carolina; New York City—how many of those have actually been a subject of a Board investigation?

Dr. GARBER. In each of those cases the Board has done an investigation of the accident.

Mr. OBERSTAR. In all of them. So you have verified all of the facts listed in the chart on page 1 and 2 of your testimony, correct?

Dr. GARBER. That is correct, sir.

Mr. OBERSTAR. And all those involved fatalities. One did not involve a fatality, but serious critical injuries. Where there are fatalities, isn't that a matter of highest interest of the Board, highest urgency for action?

Dr. GARBER. Certainly, when we see accidents involving multiple fatalities, we do complete investigations, and those are the ones that often stimulate some of our most critical recommendations.

Mr. OBERSTAR. Thank you.

Mr. Kutz, your work resulted in some charts for examinations by category of medical profession, medical examiner types by collection State. Excuse me, you have it in your possession; our staff developed those charts. Is it appropriate for a doctor of chiropractic without pharmacology training to be certifying as a medical examiner?

Mr. KUTZ. I can't answer that question. I would defer to Mr. Garber on that.

Mr. OBERSTAR. Dr. Garber?

Dr. GARBER. Yes, the Board has actually, in its reports, identified this as a potential deficiency of the current program. Doctors of chiropractic, while they may be quite well trained and versed in those issues where they normally practice, do not practice the dis-

pensing of medications. As a result, the evaluation of an individual who is on medications may be inappropriate for an individual who has no training in evaluating such medications.

Mr. OBERSTAR. And advanced practice nurses, that is a matter for each State to certify, isn't it? A State can certify an APN to do medical exams within a certain category, is that correct?

Dr. GARBER. That is correct. In each case the States are the ones that will make certifications as to the scope of practice for each of these particular subspecialties or subgroups of medical practitioners.

Mr. OBERSTAR. Is an APN likely to detect the conditions that were cited, say, in NTSB investigations or in the GAO—Social Security disability benefits, aneurism of aorta, valvular heart disease, chronic obstructive pulmonary disorders? Is that something that an APN is likely to uncover?

Dr. GARBER. In many cases, the use of physician extenders, APNs or PAs, is limited to clinical observation and evaluation. They may, in certain circumstances, have prescriptive authority, they may have ability to do some limited diagnosis. Certainly, their training is not the same as those received by physicians, MDs or DOs.

Mr. OBERSTAR. Ms. McMurray, is it within the competence of FMCSA to raise the standards to specify which category of provider is appropriate to conduct a medical examination and certify?

Ms. MCMURRAY. Chairman Oberstar, we rely on the State licensing boards, individual State licensing boards to determine the scope of practice——

Mr. OBERSTAR. That is not my question. The question is is it within the competence of FMCSA to set standards?

Ms. MCMURRAY. To set the standards for the medical examiners, sir?

Mr. OBERSTAR. Yes.

Ms. MCMURRAY. It is within our competence to establish the medical standards and to provide the protocol——

Mr. OBERSTAR. And what you have established is to accept State licensing organizations, is that right?

Ms. MCMURRAY. Yes, if a State licensing agency certifies that health practitioners can conduct physical examinations and can apply our medical protocols, we accept the certification of the States of that capability.

Mr. OBERSTAR. Well, it seems to me you should be in the basis of raising, not complying or being complicit with States.

Mr. Kutz, you said 25 States allow drivers to self-certify?

Mr. KUTZ. That is correct. Pretty much checking a yes box on the application of their medical status.

Mr. OBERSTAR. Do you remember the hearing we had last year in this Committee, in this Committee room, on the Coast Guard's Deepwater program for extension of surface cutters from 110 to 123 feet and the self-certification that was permitted by the Coast Guard for Lockheed Martin and Grumman Boat Division and the Shipyard?

Mr. KUTZ. I am not familiar with that, no.

Mr. OBERSTAR. You might ask your colleagues about that. It was a disaster. It shouldn't be allowed.

I withhold further questions and yield to the gentlemen from Tennessee, our Ranking Member.

Mr. DUNCAN. Thank you very much, Mr. Chairman.

Dr. Garber, I know that everything looks easy from a distance, but the accident that led or helped lead to these eight recommendations I understand took place in 1999 and that you or the NTSB came out with your recommendations in 2001. Now, I have been told that there has been some progress made, but why do you think there has been apparently what you consider unacceptable or very little progress? Have you been told that any of those recommendations are impossible or extremely difficult, or they disagree with portions of them? What is the situation there, in your opinion?

Dr. GARBER. The Board recognizes that we are asking for a lot. This is the establishment of a comprehensive system where none really previously has existed. The concern that the Board Members have previously expressed on this issue is that the progress has not been measurable, that only a single NPRM has been issued over that period of time and that another has been promised. The Board is concerned that that seems to be a long time simply to issue notifications of proposed rulemaking, rather than to get to actual rules or to at least issue more than one notice of proposed rulemaking on an issue that the Administration itself has established a high priority for.

Mr. DUNCAN. All right, thank you. On the first page of your testimony, you say the Safety Board has investigated many other accidents involving commercial drivers with very serious preexisting medical conditions. Then on the next page you say the Safety Board, of course, investigates only a limited number of highway accidents. Then you say, but I can tell you that it is actually unusual in our accident investigations to find a commercial driver for whom there are not at least some questions regarding medical certification.

How many highway accidents have you investigated, let's say, in the last 10 years or 5 years, or how many do you typically investigate in a year's time? I mean, I am trying to figure out is it many or is it few? It seems a little bit of discrepancy there.

Dr. GARBER. We investigate about 40 accidents a year, and about 5 of those are investigated in substantial detail. The point of that phrase in the testimony is just to note that in many cases we have to do a fair amount of investigation to determine that in fact a medical condition was contributory or was present in a driver. In many cases, that information is not available to someone who does a less thorough investigation, such as may happen on the State level. It is thus very difficult to get data on exactly how many accidents may be caused by or contributed to medical conditions.

Mr. DUNCAN. But I assume that you feel like you have at least investigated enough accidents thoroughly to feel comfortable with your recommendations and feel comfortable with your testimony here today.

Dr. GARBER. That is correct, sir. And, really, as stated, the issue is that even when we investigate accidents for reasons other than driver error or when we are looking at accidents to determine the crashworthiness of buses, for example, we find in many of those cases very concerning conditions in the drivers—conditions that

really under no circumstances should have been allowed to persist without additional evaluation and/or treatment.

Mr. DUNCAN. One of your recommendations is for FMCSA to create a mechanism for reporting medical conditions in between examinations. Do you think this would be difficult to implement or put into effect?

Dr. GARBER. Actually, this is one of the concerns that the Board has previously expressed, and is one of the simpler recommendations to put into effect—to simply identify a reporting mechanism by which individuals who had been identified could be reported to appropriate authorities. That is one of the ones where we have seen no action at all from the FMCSA.

Mr. DUNCAN. Why, if it is so simple and easy to do, do you think there has not been any progress made on it?

Dr. GARBER. I think that would be a question for the FMCSA, sir.

Mr. DUNCAN. Okay.

All right, Mr. Kutz, this sounds like a shocking number, 563,000 individuals issued CDLs who were receiving full medical disability benefits. I am not sure I really understood the slide that was put up about your statistics. Could we flash that back up there? Especially the 63 percent figure. It says you have got 563,000, then you have got the 85,000, and that is not 63 percent of the 563,000.

Mr. KUTZ. Right, it is 63 percent of the State information. Because we weren't sure whether all the licenses were active—many licenses were inactive—we got from the States the active licenses. So for the 12 States we got active licenses for, there were 135,000 hits, if you will. Of those, 63 percent of the individuals received their CDL after the Federal Government had made a 100 percent disability determination for that person. Because you could have a situation where someone was—the opposite happened, where you actually had the disability afterwards. So, actually, the disability determination was before in this case.

Mr. DUNCAN. So you are not really sure exactly how many of the 563,000 are active at this point?

Mr. KUTZ. That is correct, because we got data from about 42 percent of the licenses there.

Mr. DUNCAN. How many people did you interview altogether?

Mr. KUTZ. Thirty or 40 cases. So there were other cases that were very suspicious. The ones we reported on were the ones we could make a clear determination. As many of you have said, there is a lot of subjectivity involved. We did not have medical doctors in the field doing the investigations, we had criminal investigators doing them.

So the cases we reported were the ones who were clear-cut, where the physician, for example, said, yes, I made a mistake in the certification, the person was deaf, I should not have certified, or the person had a limb that they had lost and they did not do a skills performance evaluation with DOT. Those were the clear-cut cases where the proper certification wasn't done.

Mr. DUNCAN. Were you limited pretty much to people that you suspected might be problem type cases?

Mr. KUTZ. No, not necessarily. We had data mining for certain condition codes, certainly, that were more likely to be, but we

weren't sure when we went out there. There were certainly some of the people—even of our 15 cases, some of those people may very well be properly certified if they had gone through a legitimate examination by a physician.

Mr. DUNCAN. And do you think that your findings may be more indicative of fraud in securing Federal disability benefits, as opposed to a massive abuse of the medical qualification process?

Mr. KUTZ. There were some of both. There were certainly indications of beneficiary fraud, individuals who were receiving SSI, for example, that actually appeared to be working full-time, had their own businesses, etc. So certainly there is a large portion of beneficiary fraud in here. And one other thing we saw, Congressman, is also tax fraud. Many of these drivers were being paid cash, which, of course, then they don't disclose for purposes of Federal benefits for their SSI, for example; and, of course, the companies probably aren't paying payroll taxes, then, either. So you had other fraud issues that you saw with these cases.

Mr. DUNCAN. Well, Ms. McMurray, I guess because I have spent so many years involved with minor league baseball and am still sort of a fan, I am sort of interested in statistics, and you heard me say, and I was told by the staff, that there are 4 million, roughly, commercial driver's licenses, but you said in your testimony there are 6 million. That is a pretty big discrepancy to me and I just wonder why the difference there, or what the confusion is, or is there confusion?

Ms. MCMURRAY. Well, in many cases, sir, there are CDL holders who do not operate in interstate commerce, and if you take the whole range of the number of drivers who do drive commercial vehicles, it approximates 6 to 7 million drivers.

Mr. KUTZ. Congressman Duncan, if I could mention, in the appendix to our report we had gotten the active databases from 12 of the States. For just those 12 States there were 4 million active licenses. So we know there are at least 4 million just based on those 12 States.

Mr. DUNCAN. Good gosh. You mean 4 million in the 12 States? It seems like there is a lot of confusion about how many of these licenses there are.

Ms. MCMURRAY. And if I might clarify, within that 6 million population of drivers, it includes non-CDL commercial motor vehicles between 10,000 and 26,000 pounds. So it is a little confusing, but we can certainly provide for the record a description of that to satisfy your interest in what the breakdowns are.

Mr. DUNCAN. Could you describe for me or give me an example of a disabled driver who could be qualified to operate a large truck or bus?

Ms. MCMURRAY. Yes, sir. When you look at the GAO report, you see examples of drivers who were identified in four different Federal databases as receiving disability benefits. But being disabled and being identified in those databases as fully disabled does not necessarily mean that these individuals cannot hold a valid commercial driver's license.

Now, I can give you an example of an individual who may be considered 100 percent disabled, but who nonetheless can safely operate a commercial motor vehicle. Multiple sclerosis, for example, is

a progressive disease where, in the early stages of a disease, the individual may be considered disabled in some definitions but can still operate safely a commercial vehicle. And as long as that individual is under our requirements to have medical review and come back and receive additional medical oversight by physicians and/or the medical examiner, we believe that this disabled individual should be able to hold a CDL ad to operate safely in interstate commerce.

Mr. DUNCAN. Would it be fair to say that you do not believe that the GAO investigation presents an accurate picture of medically unfit drivers on the roads today?

Ms. MCMURRAY. I do believe that the GAO has a very difficult job, and it is very important that Congress have this arm to be able to evaluate the efficacy of Federal programs. We do believe that this particular report, though, paints a picture that is not representative of the state of medical fitness for commercial drivers throughout the United States. I think we have talked to the GAO about questions we have with respect to the methodology they employed.

We do believe it is very difficult to conclude, based on these 15 case studies, the general condition of medical fitness for commercial drivers. So we have issues with respect to the findings in the report. We note that GAO did not, and very specifically went out of its way to conclude that they could not, offer conclusions and recommendations. We believe that there is more work to be done and that additional review and analysis of this problem might be more informative about the true state of commercial vehicle medical oversight in this Country.

Mr. DUNCAN. Well, with all the millions of commercial drivers that there are out there, it is a pretty big project, I guess. At any rate, the staff has asked that I request for the record if the GAO would please submit the medical examination report forms or certificates; the medical records, including specialists' evaluations, if available; and, thirdly, the list of diagnoses selected for the analysis and any detailed explanation of methodology not presented in the report. So we will give you a list of those, if you need it, Mr. Kutz.

Thank you very much.

Thank you, Mr. Chairman.

Mr. OBERSTAR. Thank you for your very penetrating questions and comments.

The distinguished Chair of the Surface Subcommittee, Mr. DeFazio.

Mr. DEFAZIO. Thank you, Mr. Chairman.

Ms. McMurray, I am having trouble. There are eight points that were made by the NTSB and you have a number of bullets, and they don't exactly match up. As I understand it, according to NTSB, your proposed rule changes address four of their points. Which four don't you address? Can you tell me that fairly quickly, or maybe NTSB can tell me which ones aren't on the list?

Ms. MCMURRAY. Yes, sir, I can. H-01-20——

Mr. DEFAZIO. Okay, let's go slowly here. H-01-20, individuals performing examinations have specific guidance and a readily identifiable source of information? We are not addressing that one?

Ms. MCMURRAY. No, sir, not in the rules.

Mr. DEFAZIO. Well, wait a minute. That seems awfully basic. How are the individuals doing the examinations going to know what qualifies or disqualifies someone from driving if they don't have specific guidance and source of information?

Ms. MCMURRAY. Well, we are talking about providing assistance and support to our medical examiners once they become part of our national registry effort, and we will be providing them the tools and the applicable protocols for interpreting the medical standards correctly, and to apply these guidelines in evaluating drivers who come before them for physical exams.

Mr. DEFAZIO. Okay, having worked in rehab counseling and also, many years ago, in draft counseling, I am very familiar with how other agencies of government qualify and disqualify people; there is basically a book that has got qualifying and disqualifying conditions and parameters in it. You go through the military standards, and if you don't meet all these standards, then you have got to have a waiver.

If you look at Social Security disability, on which I did quite a bit of work, you have to be basically permanently and totally incapable of performing any substantial gainful employment; and that would seem to point kind of to truck driving as gainful with a commercial driver's license. So then I wonder what standards you would be developing here that would hone in on that.

But let's move on. What others don't you meet? Which others?

Ms. MCMURRAY. Number eight, H-01-24, which we alluded to earlier with respect to reporting medical conditions to the medical certification and reviewing authority, and for evaluating conditions between medical exams.

Mr. DEFAZIO. Well, since we have self-certification in a bunch of States, couldn't we at least require self-reporting by drivers who feel they have developed a problem that may disqualify them?

Ms. MCMURRAY. Well, this particular recommendation, Mr. DeFazio, as we look at this and as we look at building this infrastructure and these building blocks to establish this medical oversight system, we see this as an important additional enhancement down the road. Right now we have to establish the system, as Dr. Garber pointed out, which is currently not robust, and we are building all the pieces for a more effective medical oversight program. We would hope that eventually we can satisfy the intent of this recommendation, but we feel strongly that we need to establish the baseline national registry medical examiners that are certified to do these exams and then to add to this infrastructure by adding this particular attribute.

Mr. DEFAZIO. You know, even if you did define my expectations and develop a system that would deal with many of the other problems we have heard from so far today, that would leave kind of a big gap between rigorous exams and reporting requirements on non-counterfeitable medical certificates linked to the commercial driver's licenses but we would ignore any intervening conditions that cropped up.

I don't know why we wouldn't kind of go for the whole thing all at once here. I am just struggling with this. We have a totally failed system now, and if we are going to build a new system, why

wouldn't it be the system we want to have for the future dealing with all of the problems the existing system has and put it in place? Granted, that is a big job, but—have you looked at the FAA, the system for certifying pilots?

Ms. MCMURRAY. Yes, sir, we did, in fact. We are always looking for opportunities to emulate the best practices of our sister agencies, and we have looked very specifically at the way the FAA has established its oversight program. Frankly, there are quite a number of differences, and primarily scope of oversight that we have to exercise and that of the FAA.

Our program is roughly tenfold the size of the regulated population that the FAA has to cover. We have over 40,000 examiners; they have about 4800 airmen physicians able to conduct physical exams. There are a number of things that the FAA system would be very helpful for us to emulate. We are looking very closely at the way they monitor physical exams and we are looking at other aspects of their program that we think can be adapted to our program. But, by and large, because of the difference in size and the difference in need that we have for ensuring that commercial vehicles receive properly administered physical exams, that the FAA model, while illustrative, is not easily adaptable to our interests.

Mr. DEFAZIO. Well, you have one critical and overwhelming similarity: both people are operating machinery that can kill, can either kill passengers, kill people on the ground, kill the operators. And we want to be certain that people aren't flying planes and blacking out, as we have seen here from various conditions. I am not certain that—I realize the scope is bigger, but I don't know that anything else should be different about it. Are you trying to get something here that is much less expensive for people to get certified, is that part of your objective here? Because I think an exam for a pilot is fairly expensive.

Ms. MCMURRAY. Yes, I believe it is between $250 and $500, and we do have a different population. But having said that, we are committed to not compromising safety in the pursuit of that expense, and the standards that we have established currently for commercial vehicles are different than the standards that the FAA has established for pilots.

Mr. DEFAZIO. Right. But you aren't even meeting your own different standards at this point, with all the loopholes we have here.

Ms. MCMURRAY. Well, again, as our medical review board examines the adequacy of our existing standards, we expect that we will be seriously looking at the recommendations that they offer. They are also looking at evidence reports that include the pilots and other transportation workers and the occupational demands of those occupations.

Mr. DEFAZIO. When do you expect we will have a new system in place that will deal with at least these most egregious problems we have seen here—people driving without certification, expired certification, counterfeit certification, certification done by individuals who have no idea what they are certifying people for or how they should certify them? How about those four problems? When will we have a system in place that can deal with those four major problems?

Ms. MCMURRAY. Well, I am happy to report we are making progress. I know there has been some frustration offered by the Chairman about the delay in these two cornerstone rules of the merger of the medical certificate with the CDL drivers license, and we are very close to releasing our final rule on that. There have been delays. We have been as frustrated with some of the lack of progress in the completion of these rules in light of our other rulemakings that have taken priority and are very difficult rules to develop. Our national registry——

Mr. DEFAZIO. Do you need more resources in your agency to get this done on a more timely and expedited manner?

Ms. MCMURRAY. Sir, we do have a significant regulatory workload and we do have a priority setting scheme that allows us to address these rules. They are very complex rules.

Mr. DEFAZIO. Could they be done more quickly if you had greater resources?

Ms. MCMURRAY. It is not a matter of resources as much as it is the expertise to apply to the problem-solving and the time necessary——

Mr. DEFAZIO. Well, maybe you need to hire some people with expertise. Again, if we could, I understand you are addressing the Chairman's specific concern, but I raised a little more, I thought a simpler, sort of global concern, only listing what I saw as four of the biggest problems with the system today, and I was trying to ask for a general time line when you thought we would have in place a system to deal with those four problems. One year, two years, three years, five years, ten years?

Ms. MCMURRAY. Again, I would say that we are further along than we have ever been and I would say that within the next three years we should see some tangible implementation of these programs, starting with phasing in of some of these requirements.

Mr. DEFAZIO. Okay, thank you.

Thank you, Mr. Chairman.

Mr. OBERSTAR. The gentleman from North Carolina, Mr. Coble.

Mr. COBLE. Thank you, Mr. Chairman.

Good to have you all with us, folks.

Dr. Garber, in my opening statement I touched on my belief that the decisions regarding CDL eligibility should be determined on a case-by-case basis after consultation with a qualified medical provider. What do you say to that?

Dr. GARBER. I don't think that we would have any disagreements so long as the individual that is making the determination is in fact qualified to do so. One of the concerns we have, and we have repeatedly expressed, is that many of the people who are doing them—even many of the physicians—apparently are not educated and qualified to do so.

Mr. COBLE. And I used the word qualified, you remember.

Dr. GARBER. Right. And we think that is a concern. It is certainly possible to do it with appropriate guidance. We don't feel that it is appropriate for even a qualified individual to hang out a shingle and say, without any guidance whatsoever, I will make an independent estimate.

Mr. COBLE. I concur with that.

Mr. Kutz, what do you say to that?

Mr. KUTZ. I would agree with you, qualified, yes, case-by-case, because there are very many subjective factors. One condition can be a yes or a no depending on where they are.

Mr. COBLE. Ms. McMurray?

Ms. MCMURRAY. Yes, I agree, sir.

Mr. COBLE. Let me put this question to each of you.

Mr. Kutz, your testimony seems to imply that the diagnosis of a serious medical condition or the determination that someone is eligible for disability benefits are disqualifying events. Is diagnosis alone sufficient to disqualify a driver?

Mr. KUTZ. No.

Mr. COBLE. Ms. McMurray?

Ms. MCMURRAY. No, sir. We need to look at the medical background.

Mr. COBLE. I didn't hear you, Ms. McMurray.

Ms. MCMURRAY. I said no, it is not a necessarily disqualifying offense. We need to look at the individual's medical history and current condition and current diagnosis.

Mr. COBLE. Dr. Garber?

Dr. GARBER. Sir, I think there are conditions for which it would be reasonable to assume that there would not be an appropriate qualification standard. An individual with an uncontrolled seizure disorder probably ought not be allowed to drive on the roads. That having been said, many of the conditions that we are discussing, as I stated, if appropriately evaluated, monitored and treated probably are consistent, or at least could be considered consistent with the safe operation of a commercial motor vehicle.

Mr. COBLE. Thank you, sir.

Ms. McMurray, does FMCSA have the resources necessary to ensure the viability of the medical review process so that those who do indeed follow the letter of the law have the opportunity to obtain a CDL license?

Ms. MCMURRAY. Yes, sir. We have examined our program needs and we have projected what our needs will be to support these programs, and we believe we have adequate resources to carry out that mission.

Mr. COBLE. I thank you all for your testimony.

Mr. Chairman, I would like to submit additional questions for the record, if I may.

Mr. OBERSTAR. Without objection, the questions will be referred to the witnesses and the responses to the Committee and distributed to the Members.

Mr. COBLE. And I yield back, Mr. Chairman.

Mr. OBERSTAR. I thank the gentleman for his questions.

Mrs. Napolitano.

Mrs. NAPOLITANO. Thank you, Mr. Chairman. I listened with great interest to the testimony, since my area has major truck traffic. The Alameda corridor goes through my whole district, so we have 25,000 trucks a day use the freeway, one of my freeways, I-5, and another 22, the 60 and 40,000 605. So I have trucks all over.

I have great concerns about the ability of forcing the implementation of the recommendations that have not been met, and I agree with my colleagues. You go around very nicely about the question of enough funding to be able to get qualified personnel to do the

job. If you were able to get that amount of money necessary to put qualified people on the job, could you do that job in, say, a year?

Ms. MCMURRAY. We believe that—I am not sure I fully understand your question.

Mrs. NAPOLITANO. Well, you stated you have other priorities that have been forced upon you by this Congress by law, by different entities.

Ms. MCMURRAY. Yes, ma'am.

Mrs. NAPOLITANO. My question is, in order to implement some of the recommendations, which are going to be critical to the safety of the people in this whole Country of ours, would it be possible to expedite the application of the recommendations and the enforcement, the medical doctors and ensuring those medical doctors are appropriately trained, that they are certified, whatever it takes, listed to be able to then also do the communication area so that if a California law enforcement officer stops a truck driver, that he can immediately tell. I would also suggest that we add mental health capability to some of that list.

Ms. MCMURRAY. Yes, ma'am. In the development of these two major rules that I mentioned, the medical certification merger with the licensing function, and the national registry of certified medical examiners, we have calculated what the costs of implementation are. We have grant programs that are available to the States in order for them to implement these requirements because in many cases these are burdens on the States and we have offered them financial assistance to be able to make those changes.

With respect to the training and curriculum development and the certification of the medical examiners, we have ample resources to carry out those initiatives and we are convinced that we have thought through very clearly what that training requirement is and what the requirements will be to implement those two rules.

Mrs. NAPOLITANO. I still find it a little hard to be able to put it all together in my mind to be able to complete—how would I say?—compliance with those recommendations. Have you also taken into consideration truck traffic coming in both from Canada and Mexico, in terms of safety issues and applying the same standards? Because I don't know that NAFTA allows us to do that anymore, since there have been the court findings that we must comply. Is this one of those other necessary steps that need to be taken with those drivers?

Ms. MCMURRAY. Is your question, do Mexican and Canadian drivers have to meet medical standards that U.S. drivers have to meet?

Mrs. NAPOLITANO. That is correct.

Ms. MCMURRAY. Yes, they do. And they do this in concert with the licensing function in both those countries.

Mrs. NAPOLITANO. But if it is not reviewed promptly, if there is no list that an enforcement officer can be able to check against, how is that going to be applicable?

Ms. MCMURRAY. We have reciprocity agreements with these two countries, where we compare the comparability of the medical standards in Canada, the United States, and Mexico. So when a Canadian driver or a Mexican driver travels in the United States, the production of the CDL, the comparable commercial driver's li-

cense for the Canadian and the Mexican driver, that licensing function and that medical certification occurred at the licensing function. So when we do our CDL checks of those drivers, the driver's license is equivalent to an affirmation that the medical examination was performed and that the driver has a valid medical certificate.

Mrs. NAPOLITANO. My mind is racing and I am running out of time already. Is that indicated on the license itself, that they have an approved medical review and the date of expiration of that review? Would that be one of the things that you could think of doing?

Ms. MCMURRAY. Yes. Again, when Canada and Mexico officials issue the comparable commercial driver's license for their drivers, the medical certification process occurs at that licensing point, just as our medical CDL rule would propose that the U.S. CDL is equal to a medical certification.

Mrs. NAPOLITANO. But there is a difference in the expiration of the driver's license and the expiration date of the medical.

Ms. MCMURRAY. Yes, ma'am. The foreign CDL license does have an expiration date, but the presentation of the license to the enforcement officer reveals or confirms that the medical exam on that driver was conducted. So the CDL is equivalent as is the affirmation that the driver has a valid medical certificate with the licensing originating office.

Mrs. NAPOLITANO. I am sorry, Mr. Chairman, one more question, then I will be out of your hair.

Do you check, as both Dr. Garber indicated, that the driver is currently licensed against Federal medical disability listing?

Ms. MCMURRAY. No, we do not do that at this time.

Mrs. NAPOLITANO. And the reason?

Ms. MCMURRAY. Again, the person who is disabled, we have tests of whether the individual who presents himself to a medical examiner for a physical exam is able to safely operate a commercial motor vehicle. We do not check, at this time, whether this person is receiving disability benefits, because they have to pass the series of medical standards that we have set down for being issued a medical certificate.

Mrs. NAPOLITANO. Well, wouldn't it stand to reason that you should do some audits at one time or another to see if there is some fraud? And then, again, what do you do with those that you find have committed fraud? Who do you refer them to? Are they prosecuted, to send a message?

Ms. MCMURRAY. Yes, we have a very aggressive enforcement program. We have, last year, performed over 3.5 million roadside inspections. That detection can occur at the roadside as well as when we conduct compliance reviews of high-risk carriers. So we do have a safety net to identify when there is fraud and when there is obvious problems with the medical certificate.

Mrs. NAPOLITANO. I still think you need the funding.

Mr. Chair, thank you. I have asked the California Highway Patrol for information to see if they have anything that they might add, and I would request that they be introduced into the record once I receive them and submit them within the time frame. Thank you.

Mr. OBERSTAR. Without objection, so ordered.

Dr. Garber, Mr. Kutz, your reaction to Ms. McMurray's response to Mrs. Napolitano's question?

Mr. KUTZ. With respect to the medical database, it is interesting, we received an e-mail from the State of Indiana, which is one of the most progressive States in overseeing this area, and they have actually asked for our database of matches of people that have these conditions because they want to audit some of those cases; and that is one of the only States we are aware of that does at least random, possibly full, audits over time of these licenses. So someone is thinking along the lines of exactly what you have said there.

With respect to fraud, I am not so certain there are significant consequences. In our interviews, it seemed there aren't a lot of serious consequences. You might get a citation, but you get back in the truck and drive away. So I am not sure that that is—yes, I think it is more of that. I think that is reality.

Mr. OBERSTAR. So the issue is that even where an inspector, investigator pulls a person over, finds an invalid license, they can't stop that person from driving?

Mr. KUTZ. I believe they drive away. That is my understanding.

Mr. OBERSTAR. Dr. Garber?

Dr. GARBER. We have certainly found circumstances. In the New Orleans bus accident investigation, we made that query to the Louisiana State authorities and asked what would happen if one of these individuals was found to have a non-current medical license when stopped by police. At that time, at least, it was a $75 fine.

Mr. OBERSTAR. Well, that is not a very good enforcement. That does not qualify for being a safety agency, in my opinion.

Ms. Edwards.

Ms. EDWARDS. Thank you, Mr. Chairman.

I am curious for each of you to look at the question of mild to severe sleep apnea, because in looking at the study that FMCSA did in 2002, finding that 28 percent of commercial drivers have mild to severe sleep apnea, to me that seemed pretty extraordinary, and I am curious as to, one, how that compares to the general population and whether there is a relationship between sleep apnea and driving ability.

And then to a larger question, so many of these accidents then later are attributed to fatigue or sleep deprivation, and I know that the universe that you studied at the GAO was not necessarily that, but it raises the question as to whether the 3 percent estimate is greatly underestimated in terms of medical conditions, given that fatigue can often be a sign of underlying significant medical conditions.

Dr. GARBER. It seems reasonable that the 3 percent figure is probably a minimum in that the investigations done are typically not to the level the NTSB would do and, therefore, probably are not identifying in every case those medical conditions which may have been contributory.

With regard to sleep apnea, the studies certainly indicate that, in the trucking population, the prevalence is much higher than in the general population. The trucking population tends to be more obese than the general population, which is a risk factor, and has

other conditions that may be associated with obstructive sleep apnea which are risk factors. The FMCSA's medical review board has reviewed that issue and has made suggestions and recommendations to the FMCSA. I don't believe the FMCSA has taken any action on those recommendations at this point in time.

And in response to your question as to whether it is a risk for vehicular accidents, there have been a number of studies showing that. In fact, the risk is that an individual with untreated sleep apnea probably has somewhere between a six- and tenfold risk of being involved in a traffic accident as a certain individual without the diagnosis.

Ms. MCMURRAY. And I would point out that, currently, if drivers have severe sleep apnea that interferes with their safe driving, they are not qualified to drive. And as Dr. Garber pointed out, our medical review board, who has met eight times in the last year in looking over our current list of medical standards, has made recommendations with respect to potential changes to sleep disorder screening, including sleep apnea.

Mr. KUTZ. I would only just add that many of the cases we looked at, which is several dozen, individuals had sleep apnea along with other conditions. But we didn't look at specifically what you are talking about.

Ms. EDWARDS. I am curious also as to the question around doctor shopping. I mean, I am a lawyer, so I understand forum shopping, but in terms of searching for a medical examiner, are there consequences both for the driver and for the medical examiner?

Ms. MCMURRAY. If your question is if the driver is detected to have failed a physical exam with one examiner and gone to another and received the medical certificate, we can often identify that during compliance reviews, during information that comes to our attention with respect to this issue. We are committed to ferreting out this fraud.

We are hopeful that the building blocks that we are putting in place with respect to medical certification is going to help us deter doctor shopping, it is going to help us compare medical examiner performance so we can see, for example, trends that might develop with respect to medical examiners who always have 100 percent pass rate. That would be an indicator to us that we need to look more extensively at the performance of that medical examiner to ensure that they are applying the standards properly.

Ms. EDWARDS. And then it raises the question, doesn't it, about the consequences not just for the driver, say losing a license or facing a fine, but consequences also for that examiner.

Ms. MCMURRAY. Absolutely. Again, in developing this medical examiner registry, our intent is to require training of the medical examiners on our medical standards so that they can be applied universally and they can be applied properly with proper guidance and assistance, and if we discover that medical examiners are not applying those standards according to the training and according to the requirements of the medical examiner position, that medical examiner will be proposed for removal from the registry.

Ms. EDWARDS. Thank you.

Mr. OBERSTAR. I thank the gentlewoman for her questions and the responses.

Now, Dr. Garber and Mr. Kutz, what is the penalty for not having a valid medical card?

Mr. KUTZ. I don't know for sure. I expect it would vary by State. But, again, we didn't see a lot of severe consequences. And I think one of the issues here, from an enforcement standpoint, is, first of all, people thinking there is a chance they will get caught and, if they actually do get caught, that there is a consequence; and I am not sure the people we talked to believed there was a whole lot of consequence to getting caught.

Mr. OBERSTAR. Dr. Garber, is that your experience, that there is no out-of-service offense with penalty?

Dr. GARBER. I would like to point out that there are some States, notably California, where the CDL and medical have been merged and where not having a medical certificate would prevent the individual from having a valid CDL and would be cause for them to be taken out of service. So obviously in those circumstances the consequences would be much more significant.

For those States that do not have it, the offenses vary across the board; each State sets its own offense. And as I have said, when we did our New Orleans investigation, it was only a $75 fine.

Mr. OBERSTAR. How many States do not merge the two?

Dr. GARBER. The vast majority of them do not have a combined——

Mr. OBERSTAR. The vast majority do not.

Dr. GARBER. That is correct.

Mr. OBERSTAR. Extremely difficult for a State, then, to track these bad actors, isn't it?

Mr. KUTZ. Well, half of the States are self-certification States, and they don't keep copies of the actual certificates, so, yes, it is very difficult in those cases, which I think the proposed standards would certainly change that by the merging.

Mr. OBERSTAR. Ms. McMurray, why are you allowing self-certification States? Why haven't you issued a rule to correct that?

Ms. MCMURRAY. Self-certification, Mr. Chairman, has to do with the CDL process and not the medical process. And I would add that our enforcement activity does in fact——

Mr. OBERSTAR. That is not what I heard earlier.

Ms. MCMURRAY.—include, last year, over 145,000 citations at the roadside for a driver not having the medical card, as well as 42,000 for expired certifications. So our inspectors who man these inspection stations across the Country are checking the medical certificate, they are citing the violation on the roadside inspection reports. The results of those violations feed into our high-risk prioritization scheme and in the conduct of a compliance review we take enforcement action against the carriers whose drivers have a pattern of not having either a valid medical certificate with them or an expired medical certificate. So there is a consequence to it.

Mr. OBERSTAR. Is that accurate, Mr. Kutz?

Mr. KUTZ. Well, if you could put up the application again for the State of Michigan, the issue of merging of the two, I showed that in my opening statement. There is a check box. This is the Michigan application, and you see there all they have to do to validate their medical certification is check that yes box. There is no other requirement.

Mr. OBERSTAR. That is not adequate.

Mr. KUTZ. And the other thing, Mr. Chairman, I would just add to that is it is interesting to think about this, but these people, when they apply for these licenses, they pay a fee. How many people would actually check no?

Mr. OBERSTAR. Of course not. Of course not.

Ms. MCMURRAY. If I might add, Mr. Chairman, there is a requirement that the carrier verify that this box was checked correctly and that the driver produced the medical certificate before this driver can work for this company and can be qualified to operate.

Mr. OBERSTAR. But you also have the issue of medical examiner shopping. And there is nothing to catch the driver who goes to one examiner and is rejected, goes to another and is accepted; and there is no tracking.

Ms. MCMURRAY. Yes, sir, that is a correct statement today. But, again, these two rules that are very close to being issued are going to help us with identifying this problem——

Mr. OBERSTAR. Why has it taken eight years to get to this point?

Ms. MCMURRAY. Well, sir, we have been——

Mr. OBERSTAR. I am the author of that language in the law.

Ms. MCMURRAY. Yes, sir.

Mr. OBERSTAR. And we expected better of you.

Ms. MCMURRAY. These rules are very complicated. We are identifying areas that have immense burden on the State. We have had to confer with the States with respect to implementation costs. We also have had to ensure that we apply critical thinking to these problems. For example, who is going to pay for these changes to State IT systems and staffing that they may need to add to carry out these requirements? Is training required in order to prepare law enforcement to properly enforce these changes? The medical examiner community has to be trained and certified. These issues have costs. We have to think about unintended consequences, and in the midst of our regulatory burdens——

Mr. OBERSTAR. I think if your agency—excuse me. I think if your agency had a safety mindset and a safety mission, you would have done this in less than eight years. I am telling you that; I am not asking you any more. Your budget has gone from $181 million in 2000 to $490 million. You shouldn't have any lack of personnel resources. What is lacking is will, will to tackle the issue and realize that every time there is an accident out there, there is a fatality, that has to be on your conscience. And I want you to carry that spirit of compliance and of safety concern back to your agency and get people moving.

Ms. MCMURRAY. Mr. Chairman, I can assure you that safety is our most important priority.

Mr. OBERSTAR. Well, but you haven't demonstrated it to my satisfaction, and I expect better out of this agency.

Now, the medical card and form are available on the FMCSA Web site. Anybody can download it. What is wrong with that? Dr. Garber, Mr. Kutz?

Dr. GARBER. Well, again, the NTSB has pointed out that it is a potential failure point of the system in that there is nothing to prevent an individual from filling it out themselves, fraudulently, or

any mechanism to track those forms because, obviously, they can be freely reproduced.

Mr. OBERSTAR. Mr. Kutz?

Mr. KUTZ. Yes, these are things that would be easily counterfeited. Certainly, some sort of integrated database—and, again, back to like the audits that the State of Indiana does—could potentially catch those types of things. But you want to prevent people from getting in the system with false medical certifications.

Mr. OBERSTAR. What has the agency done to address that issue?

Ms. MCMURRAY. Mr. Chairman, we do spot-check when our investigators conduct compliance reviews.

Mr. OBERSTAR. Why do you have that on the Web site, to begin with?

Ms. MCMURRAY. For information and for use by medical examiners and the public, to understand what our requirements are, including the applicable guidelines.

Mr. OBERSTAR. Shouldn't you have a secure system, not have that available to the public, when it can be downloaded and fraudulently used?

Ms. MCMURRAY. Well, we do have mechanisms to spot fraud and the use of these medical certificates in an inappropriate way. We do have this through our audits, our roadside inspections. There are obvious times when we can identify when a medical certificate has been altered, and we believe we have the oversight ability to ferret out not all of these.

We need to do a better job in this arena, definitely, but we are setting with our medical certification rule in particular the ability to ensure that we cut down on fraud. It is a very big first step, since the driver will have to produce the medical certificate to the licensing agency. It will become an electronic record so that roadside inspectors can in fact verify that the medical certification is valid and is not expired. This is a very big step in cutting down on fraud.

Mr. OBERSTAR. Mr. Kutz, Dr. Garber, what are the tools available to inspectors to determine whether a medical card is valid?

Mr. KUTZ. At this point, I don't really know. I am not aware of any. I know that the proposed notice, again, of rulemaking here has envisioned a system of integration where there is a law enforcement officer who pulls someone over can check online, but that appears to be many, many years away. So I am not sure what is available right now.

Mr. OBERSTAR. Dr. Garber?

Dr. GARBER. The certificate does have a space for the examiner's phone number. In our investigations, we have been told previously that that can be used to call the physician and determine whether the individual was in fact examined. Of course, it requires that the physician be in their office and available and that the records be immediately available. We are not entirely convinced that that may be the best way of securing confirmation of the validity of a certificate.

Mr. OBERSTAR. There are substantial differences in training in the professions permitted to conduct medical exams. Should there be standards set and enforced and established? Dr. Garber?

Dr. GARBER. Again, one of the concerns that we have expressed on a number of occasions and in testimony here is that any individual permitted by the State to perform examinations is permitted to conduct these examinations for commercial driver's licenses. The difference is that an individual who is certified to conduct an exam has the ability to examine an individual. What the CDL requires in addition to the medical portion, is the determination as to whether that individual should in fact be operating a vehicle in commercial operations.

While an individual that the State says can perform a physical exam may be able to gather data effectively on that individual's physical state, the making of that determination really does require another level of ability in order to evaluate it, and that level of ability is what is missing in many of the exams that we have evaluated.

Mr. OBERSTAR. Mr. Kutz, do you concur?

Mr. KUTZ. Yes, we certainly would support the training and certification of the medical examiners, because if you think about the enforcement thing we just talked about, it is too late at that point, the people are already on the road medically unfit; the damage could have already been done. So preventing people from getting in the system in the first place, in our view, would be the most important way, and one of the ways to do that is make sure that these medical certifications are done by qualified, properly trained people that understand the DOT regulations, because if that part fails, I think the rest of it is going to fail.

Mr. OBERSTAR. Well, it is clear it has failed. And then the appeal process from denial seems to me rather perfunctory, that persons with various disabilities make appeal and then they are allowed to drive. I don't understand this. There doesn't seem to be a high enough standard. Sleep apnea is a terrible thing to allow on the road.

Ms. MCMURRAY. Mr. Chairman, if a driver fails a physical examination and wishes to have an appeal of that decision, they can place that before our agency, and our medical experts do collect the medical background of the driver, the information that is available on the driver, providing information to us to make that determination.

Mr. OBERSTAR. I yield to the gentlewoman from California who apparently had a question about something that I raised.

Mrs. NAPOLITANO. Certainly. Thank you, Mr. Chair. I appreciate your indulgence.

In looking at one of the things that was provided to us, Ms. McMurray, is that the 2009 budget proposal request was $1.3 million less for the regulatory development than enacted in 2008. Why?

Ms. MCMURRAY. Within that line item, Congresswoman, is a number of activities in that line item. Regulatory development includes support to our regulations activity, contractor support to do evidence-based collection of information. As well within that line item is the agency's assets for conducting program evaluation and, as well, the medical program. So there are three discrete functions within that line item. So a reduction of that amount is not nec-

essarily a reduction in the medical program level of effort for fiscal year 2009.

Mrs. NAPOLITANO. But it is regulatory. I mean, I would imagine regulatory would be part of your medical regulatory, as has been discussed here.

Ms. MCMURRAY. That is right. There is a portion of that, that funding line——

Mrs. NAPOLITANO. Can you tell us how much of that portion is for the regulatory development of the medical part of it?

Ms. MCMURRAY. I would have to provide that for the record, I don't know it exactly.

Mrs. NAPOLITANO. If you wouldn't mind. And then could you break that down to make sure that we understand why the lesser amount?

Ms. MCMURRAY. Yes, ma'am.

Mrs. NAPOLITANO. Then the other question is the SAFETEA-LU required the Secretary to convene the CDL Advisory Committee last year and report its findings to Congress last August. It is almost a year and nothing has been submitted or reported. The delay and when can we expect to see it?

Ms. MCMURRAY. Yes. Well, I am pleased to say that the CDL Advisory Committee and Task Force has done a very excellent job in looking at——

Mrs. NAPOLITANO. That is not what I asked, ma'am.

Ms. MCMURRAY. Yes, ma'am. The CDL report is in final clearance, we have reviewed the report and it is very close to being finalized.

Mrs. NAPOLITANO. Close as in a week, a day?

Ms. MCMURRAY. I would say within the next several months, yes.

Mrs. NAPOLITANO. Several months?

Mr. Chair, can we make sure that we submit a copy of that to our Members so we can understand what we are talking about, for the advisory committee on the commercial driver's license?

Mr. OBERSTAR. Well, it better not be several months.

Mrs. NAPOLITANO. The other question that I would have, and I don't know if it is in order, Mr. Chairman, but we keep hearing about all these different things from Ms. McMurray that encompass the delay in being able to comply with the Congressional mandate, if you will, to do this, this, this, and this. Is there a way, Mr. Chair, that we can have a follow-up hearing to determine how that breakdown has caused the delay and being able to find out at least when we can expect this to happen within the next few months—not few months, maybe six months, but less than three years?

Mr. OBERSTAR. We will continue to monitor the work of this agency and Committee staff will follow, and if there is need for an additional hearing, we will certainly do that.

Mrs. NAPOLITANO. Thank you, sir. That would satisfy some of my concerns.

The self-certification is very bothersome. Is there a way you can tie the grants to these States to be able to have them certify? We have done that to other States for them to be able to get Federal grants; you have to do this, this, and this in order to qualify and get the funding. And I realize some of those States may be smaller,

cannot afford to be able to do all the things that most of the big States can do, but certainly there has got to be a way to hold them accountable so that they too can reduce their record of tragic accidents by holding their drivers, as well as our drivers, accountable.

Ms. MCMURRAY. Yes. We do provide grants to States for their commercial enforcement operations, as well as specific grants devoted to their licensing function and their requirements to modernize their commercial driver license information system so that we can have exchange across the Country and be sure that we are removing unsafe drivers from the road.

Mrs. NAPOLITANO. But you didn't answer the question. Do you tie in grant funding to the ability for them to be able to get certain type of funding?

Ms. MCMURRAY. I am not sure I understand fully your question. Are you asking is there a penalty if——

Mrs. NAPOLITANO. No, not a penalty, but, rather, if you do not meet these requirements, you may not be able to apply for these grants because you don't meet the requirements set forth by Congress in meeting compliance.

Ms. MCMURRAY. It is something to look at. I believe we need to understand better what you are asking. I am not sure that I am fully understanding your question.

Mrs. NAPOLITANO. Well, I know that in California, I have been told by some of my electives that they do not qualify for State funding unless they do this. And I am specifically thinking right now of congestion pricing. If you do not convert the diamond lane to toll, you will not get this money. That is what I am talking about.

Ms. MCMURRAY. I am not familiar with this particular requirement. There are certain requirements that the States have to satisfy with respect to compliance with CDL requirements, that if they fail to meet certain requirements, there may be a withholding of funds.

Mrs. NAPOLITANO. Okay, so you are not requiring them to meet certain standards so they would be able to identify whether they have been medically examined, whether their medical examination card is up to date, whether they have any medical disabilities? Isn't that something that you should be looking at and tie that in so that they too should require their drivers to ensure their safety?

Ms. MCMURRAY. I do think you raise an interesting point that I would agree, that as we look at the reauthorization of the highway surface transportation agencies, this is an area that we should explore.

Mrs. NAPOLITANO. Thank you, Mr. Chair.

Mr. OBERSTAR. Reclaiming my time. The gentlewoman has pursued a very vigorous course of inquiry. The answer is yes, they should be doing it.

What is your view, Dr. Garber, Mr. Kutz, on self-certification? In what circumstances is it appropriate?

Dr. GARBER. The problem, of course, with self-certification in commercial driver operations is that an individual is obviously motivated by their ability to earn a living, to function within their chosen occupation to self-certify in a positive manner, and we have noted in several of our reports that any system that amounts to self-certification puts the driver in an awkward position of having

to perhaps remove themselves from their chosen occupation, and we think probably is ineffective.

Mr. KUTZ. I would say self-certification in this case is not adequate.

Ms. MCMURRAY. And I would add——

Mr. OBERSTAR. There is no standard by which to measure self-certification. Now, there are several Federal Government programs which we allow States to undertake actions in pursuance of Federal law, but that is only after the State has met Federal standards and qualify. We don't allow individuals to say they are doing a good job.

I mentioned earlier the Coast Guard allowed contractors on its Deepwater program to say they are doing a good job, and then the first article of their production cracked, failed in the exact three places that a whistleblower said it would crack, and a $100 million program was scrapped. Self-certification as done here is a threat and a demonstrated danger to safety. It shouldn't be allowed. And rules from FMCSA should not allow it. There is no public benefit to be gained.

AFTER 6:00 P.M.

Ms. MCMURRAY. Mr. Chairman, if I could——

Mr. OBERSTAR. I will invite you to answer questions when I ask you a question.

Have you viewed the NPRM, Dr. Garber, Mr. Kutz, to require State licensing agencies to collect medical cards? Have you reviewed the NPRM?

Mr. KUTZ. Yes, I have.

Mr. OBERSTAR. What is your opinion? Will it achieve the objective?

Mr. KUTZ. I think it gets you part way. Certainly, it is better than what we have today, and it would provide for the integration of the medical certification and the CDL process, and it would provide information, as we mentioned, for law enforcement officials to check instantaneously whether someone has a valid certificate. So, yes, it does address many issues, not necessarily all issues.

Dr. GARBER. Yes, the NTSB formally commented on that NPRM. Obviously, we have not seen the final rule yet; we are anxiously awaiting it. It is certainly possible it will address some of the concerns that we have brought up, particularly those with regard to enforcement. We have noted some significant deficiencies in it which we hope will be corrected in the final rule.

Mr. OBERSTAR. That is eight years since we enacted the legislation, directed the establishment of a national registry of certified medical examiners, one of the top priorities for NTSB. What factors can you cite that are persuasive in not having been able to issue this registry?

Dr. GARBER. Sir, if that is a question for me, the Board has asked that question on numerous occasions.

Mr. OBERSTAR. And you haven't found any?

Dr. GARBER. Unfortunately, nothing that has been compelling to the Board.

Mr. OBERSTAR. Mr. Kutz?

Mr. KUTZ. I don't have enough of a history to explain.

Mr. OBERSTAR. Ms. McMurray, when in the next two months can we expect to have a national registry?

Ms. MCMURRAY. We have developed the NPRM on the national registry; it is currently within the department circulating for review, and there are mandatory review obligations both for a department and OMB, and we would hope, sir, before the end of 2008.

Mr. OBERSTAR. Are they time limited?

Ms. MCMURRAY. Yes, sir.

Mr. OBERSTAR. Those reviews?

Ms. MCMURRAY. Yes, sir, there is—OMB has 90 days.

Mr. OBERSTAR. Which next agency has to make a review of this?

Ms. MCMURRAY. Well, the department has to coordinate and clear the rule, which——

Mr. OBERSTAR. You mean through the office of the Secretary?

Ms. MCMURRAY. Throughout the department. Everyone in the department has an opportunity to review the rule in the event that the rule has an impact on their operations.

Mr. OBERSTAR. What do you mean, everyone in the department? Federal Railroad Administration, FAA?

Ms. MCMURRAY. Any modal administration that might have an interest in commenting on our rule has an opportunity to do so.

Mr. OBERSTAR. Why didn't you do that before? Why didn't you go around those agencies and say what do you think about this, to expedite this process?

Ms. MCMURRAY. I believe we have done that, sir, but when we come to this final——

Mr. OBERSTAR. How long have you been on the staff of FMCSA?

Ms. MCMURRAY. I have been on staff since 2003, sir.

Mr. OBERSTAR. And why haven't you done this sooner?

Ms. MCMURRAY. This rule? Well, this national registry rule, SAFETEA-LU gave us the mandate to do this in 2005. I believe that we have looked very carefully at the implementation issues relating to this. This is a very big rule that affects a lot of people, over 40,000 examiners. The States are involved in this issue.

There are a number of very, very complicated aspects of this. We have to develop accreditation requirements, certification requirements; we have to look at the ability of third parties to train these medical examiners. We have to make sure we do this right and it takes some time for us to ensure that there are not unintended consequences to what we are developing. But I will assure you that this NPRM is very close to a release.

Mr. OBERSTAR. Well, I will just remind you that in 1978 the first feasibility study was completed on the very subject you are dealing with, and it has taken all this time. That is why we created a Motor Carrier Safety Administration, and I am impatient with failure to make safety the highest priority.

I grew up in a family of miners. My father was the chairman of the safety committee at the Godfrey Underground Mine for 26 years. I listened to stories of failures of safety, failure of the mining company to act when men said our batteries are either inadequate or not in supply, when there was bad air in one portion of the mine, and I will never forget my father's comment that the most unforgettable sound in the underground was the screams of the men in the cage when the cable broke and there was no safety protection to save their lives.

I worked in the mine myself in summers going through college, saw a man crushed by a 15-ton truck backing up when the man was not trained in how to back up a truck, and I couldn't stop it. I screamed. I was 50 yards away. Those and many other stories haunt me every time I confront the issue of safety, whether it is in aviation, maritime, trucking, railroading.

This Committee took action to update hours of service in the railroad sector, the first update in 100 years. It shouldn't take that long. It shouldn't take you eight years. It shouldn't take you five years or three years. Peoples lives are at stake depending upon you and your colleagues. We have given you a half a billion dollar budget, practically, to do this. There is no excuse for the foot dragging and the lives lost, and the lives disrupted and the families that grieve. I want you to keep that on your mind and on your conscience. You go back to that agency and tell them get going.

Ms. MCMURRAY. Yes, sir.

Mr. OBERSTAR. Many other issues that I could cover. I think we have covered them all. What we need is will, willpower at the highest level, and it is apparent there isn't that will at the level of the Secretary of Transportation, and that permeates all the way down through this Federal Motor Carrier Safety Administration. I expect better and we will watch you carefully.

I thank the panel for their comments, my colleagues for their interest. The Committee is adjourned.

[Whereupon, at 6:10 p.m., the Committee was adjourned.]

OPENING STATEMENT OF
THE HONORABLE RUSS CARNAHAN (MO-3)
HOUSE TRANSPORTATION AND INFRASRUCTURE COMMITTEE

Hearing On
FMCSA's Progress in Improving Medical Oversight of Commercial Drivers

Thursday, July 24, 2008
2167 Rayburn House Office Building

#####

Chairman Oberstar and Ranking Member Mica, thank you for holding this important hearing on the progress of medical oversight of commercial drivers. By addressing the level of improvements made, we can better assess the state and safety of our nation's roadways.

Millions of Americans venture onto our nation's roads each day, and ensuring their safety is not an easy task. Though car accidents are not entirely preventable, the number and severity of these crashes can be curbed with appropriate precautions. Ensuring that commercial drivers, who make their livelihoods out of being on the roads, are properly screened and tested is essential for improving road safety. Health issues, such as heart attacks, while driving contribute to 3% of all truck crashes. While heart attacks are hard to predict, screening commercial drivers for severe cardiovascular disease can possibly help ease the problem. Decreasing the number of accidents and fatalities on the roads must start with those who drive most frequently, and screening drivers for health concerns that may contribute to an accident is a crucial step toward greater vehicular safety.

Though many steps have been taken to achieve greater levels of medical screening for commercial drivers, more still must be done. As work on this issue continues, it is important that the new health screening standards are fair and consistent across state lines. Mr. Kutz, I am very interested to hear about the problem of issuing fraudulent health certificates and how this concern has affected and will continue to affect progress of improving driver safety. I am also quite curious to hear from Ms. McMurray on the progress of the National Registry of Certified Medical Examiners, particularly on how much still needs to be done and why it has not yet been completed. I personally am disappointed with the slow progress and am hoping for serious improvements in the near future.

Once again, I would like to thank the witnesses, Dr. Garber, Mr. Kutz, and Ms. McMurray, for speaking today. I look forward to your testimony.

#####

STATEMENT OF
THE HONORABLE JERRY F. COSTELLO
COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE
HEARING ON FMCSA'S PROGRESS IN IMPROVING MEDICAL OVERSIGHT OF COMMERCIAL DRIVERS
JULY 24, 2008

Thank you, Mr. Chairman for holding this hearing on FMCSA's progress in improving medical oversight of commercial drivers.

I find it alarming that in 2007, the National Highway Traffic Safety Administration (NHTSA) reported that about 4,000 crashes were a result of a heart attack or physical impairment of ability to act and 5,000 crashes were because the commercial drivers actually were asleep.

The NTSB has made several recommendations to make safety improvements to commercial drivers medical oversight programs and to date, many have not been addressed by the FMCSA. While some progress has been made, more can and should be done. I am interested in hearing from our witnesses on this point.

With that, I welcome the witnesses here today, and look forward to their testimony.

1

Statement of Rep. Harry Mitchell

House Transportation and Infrastructure Committee

"FMCSA's Progress in Improving Medical Oversight of Commercial Drivers"

7/24/2008

Thank you, Mr. Chairman.

Today we will examine the Federal Motor Carrier Safety Administration's (FMCSA) efforts to ensure that commercial driver's license (CDL) holders are medically fit to drive.

According to the National Transportation Safety Board (NTSB), the medical certification process of commercial vehicle drivers is seriously flawed.

Certifying commercial drivers that are medically unfit to drive causes major safety concerns and can ultimately lead to increased highway fatalities and injuries.

Last March, this Committee requested that the Government Accountability Office (GAO) inspect how many CDL operators are receiving benefits for medical disability.

The results of this study are truly astounding.

Approximately 563,000 individuals with CDLs – which is approximately four percent of commercial drives – have also been determined eligible for full disability benefits by the federal government.

Furthermore, in the 15 cases profiled by the GAO, there is serious cause for concern about the medical certification process. Drivers with severe medical disorders, fraudulent certificates, or even no medical certification at all have been given CDLs.

This is truly disturbing.

I look forward to hearing more from our witnesses about what we can do to improve the medical certification process for commercial drivers.

I yield back.

STATEMENT OF
THE HONORABLE JAMES L. OBERSTAR
OVERSIGHT AND INVESTIGATIONS HEARING ON
"FMCSA'S PROGRESS IN IMPROVING MEDICAL OVERSIGHT OF COMMERCIAL DRIVERS"
JULY 24, 2008

I want to begin by thanking all of the witnesses who are here to testify and answer questions on the very serious issue of medical oversight of commercial drivers.

I also want to express my personal disappointment that Administrator Hill is unavailable today to testify on this very serious issue. I am particularly perplexed that the Administrator was available and sufficiently prepared to answer questions from a reporter earlier this week but not questions from this Committee.

Medical oversight of commercial drivers and its impact on safety on our roads is an issue this Committee has been troubled by for many years. In 1999, Congress established the Federal Motor Carrier Safety Administration (FMCSA) as a separate modal agency within the U.S. Department of Transportation (DOT) and assigned this new agency responsibility for commercial motor vehicle safety. Congress charged FMCSA with an unmistakable safety mission: "(T)he Administration shall consider the assignment and maintenance of safety as the highest priority." Tragically, we have made little progress in the number of deaths from crashes involving large trucks since

FMCSA's founding. In 2006, 4,995 individuals were killed, approximately the same number as in 1995.

The safety impacts from this failure to act are real. In 2007, NHTSA reported that "heart attack or other physical impairment" was a critical factor in approximately 4,000 serious truck crashes. In July 2000, a Tennessee State trooper was killed after a truck driver with a long history of severe obstructive sleep apnea collided with his patrol car which exploded upon impact. That wasn't the first tragedy for which this driver was responsible. In 1997, this same driver "blacked out" at the wheel, striking and seriously injuring two Utah state troopers. Still, by failing to report his history of sleep apnea to his doctor, the driver successfully obtained 4 consecutive medical certificates during this period.

Since 2001, the National Transportation Safety Board (NTSB) has made eight specific recommendations to improve medical oversight of commercial drivers and Congress has given the Administration specific mandates, but I regret to say that progress has been negligible. As NTSB will testify today, FMCSA's commercial driver medical oversight system is no more robust now than it was nearly 10 years ago.

One of NTSB's recommendations in 2001 was for FMCSA to establish a system where critical medical information – such as this driver's severe sleep apnea –

would be available to examiners performing DOT medical exams. Yet this is one of the recommendations where absolutely no measurable progress has been made.

Another area where FMCSA has failed to make any progress is in aiding detection of fraudulent medical certificates. NTSB has criticized the medical certificate form because it is not a controlled document, has no standard format, and can be freely reproduced. A dishonest driver can easily download the form from FMCSA's website and fill it out himself. Right now, there is no mechanism for inspectors to verify a card's authenticity.

Today, I am releasing a report prepared for me by Committee staff that looks at the issue of invalid medical cards. Last year, staff collected more than 600 medical cards from drivers at truck weigh stations which they attempted to verify with the medical examiners who allegedly issued the cards. The report documents 30 cases – 5 percent of the sample – where either the medical examiner didn't exist or the medical examiner indicated that their signature had been forged or adulterated. I am entering the report into the official hearing record.

FMCSA's efforts to address NTSB's recommendations have been grudging and painstakingly slow. In 1999, MCSIA mandated that FMCSA merge drivers' medical information with the CDL data system. That was nearly 10 years ago and still we have

no final rule. Administrator Hill appeared before this Committee last July – more than a year ago -- and told this Committee that FMCSA was in the process of "finalizing the Final Rule." I hope that Ms. McMurray can provide a more realistic timeline for this final rule today— one to which we can hold the Administration accountable.

Interest in creating a registry of certified medical examiners dates back to at least 1978 when NHTSA commissioned a feasibility study on the issue. In 2005, SAFETEA-LU established a mandate that FMCSA create a National Registry of Certified Medical Examiners. My understanding is that FMCSA is still "studying" and "researching" the issue. The Administration has had 40 years to study and research this – it's time to start seeing some action. Without this registry, we have untrained and untested examiners conducting these exams.

Earlier this week, the Government Accountability Office released a report revealing the results of work that Chairman DeFazio and I requested on the medical certification process for drivers with serious medical conditions. This report provides excellent – although horrifying – examples of what can happen when examiners aren't up to speed on FMCSA's medical requirements. We will hear more about these findings from Mr. Kutz.

This Committee applauds the trucking industry for opening its doors and employing individuals with illnesses and disabilities. If we allowed only individuals in perfect health to drive, we would solve all of our highway congestion problems. But making these allowances has to be done in a way that does not compromise public safety. Right now, there are simply too many defects in FMCSA's medical certification program to adequately protect the traveling public.

I look forward to discussing these important issues with our distinguished panel of witnesses.

COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE

Challenges in Verifying the Authenticity of Commercial Drivers' Medical Certificates

Prepared for

The Honorable James L. Oberstar
Chairman

By the Committee on Transportation and Infrastructure
Oversight and Investigations Majority Staff

For Release on Delivery
July 24, 2008
2:00 p.m.

EXECUTIVE SUMMARY

In 2007, the National Highway Traffic Safety Administration (NHTSA) reported that "heart attack or other physical impairment of ability to act" was a critical factor in 3 percent, or approximately 4,000 of all serious truck crashes.[1]

The Federal Motor Carrier Safety Administration (FMCSA) requires Interstate Commercial Drivers to pass a comprehensive physical exam before obtaining a commercial drivers license and at least every 2 years thereafter. The medical examiner provides the driver with a "medical card" as proof that the driver has met the medical requirements. The driver must carry this card at all times and produce it upon request by a State or Federal inspector. Some States also require the card as proof prior to issuing a Commercial Drivers License (CDL).

Medical oversight of commercial drivers has been on the National Transportation Safety Board's (NTSB) "Most Wanted" list since 2003. One of the eight related recommendations for improvement is, "Enforcement authorities can identify invalid medical certification during safety inspections and routine stops."

To determine whether and to what extent drivers are carrying invalid medical cards, Majority Committee staff collected a sample of 614 medical certificates from commercial drivers during roadside inspections. We attempted to first validate the existence of each medical examiner through extensive searches of State licensing databases and the Internet. We were unable to validate the medical examiner information for 23 certificates, or 4 percent of our sample.

We then sent a copy of the relevant certificates to every medical examiner we were able to positively identify. We asked that they compare the card to data in their files and confirm a match. We received 441 responses (75 percent of the total mailing). Of these, 404 (92 percent) confirmed that the certificates were "valid," 7 (2 percent) stated that the certificates were "invalid," indicating that they had been forged or altered, 4 (1 percent) were unable to determine if the certificates were valid, and 23 (5 percent) were returned by the Postal Service as undeliverable.

The 23 "unidentifiable" certificates and 7 "invalid" certificates represented 5 percent of our sample.

Based on our experiences conducting the survey and validating the results, we concluded that opportunity exists for a commercial driver to fabricate or adulterate a certificate with little risk of detection. No practicable mechanism currently exists for inspectors to determine whether a certificate is valid. Furthermore, inspectors have limited tools to punish drivers for not maintaining a valid medical certificate. Not having a certificate; or possessing an expired or false certificate are not out-of-service violations.

We concluded that these factors may be enabling drivers with serious and potentially disqualifying medical conditions to avoid appropriate medical oversight.

Our survey found that 67 percent of the medical exams were conducted by Medical Doctors and Doctors of Osteopathy. Doctors of Chiropractic conducted 16 percent of exams, 10 percent were conducted by Advanced Practice Nurses, and 8 percent were performed by Physician's Assistants.

The results of our survey cannot be generalized to the commercial driver or the medical examiner population as a whole.

We are making five recommendations.

[1] DOT, FMCSA, Large Truck Crash Causation Study, Publication No.: FMCSA-RRA-07-017 (July 2007).

CHALLENGES IN VERIFYING THE AUTHENTICITY OF COMMERCIAL DRIVERS' MEDICAL CERTIFICATES
TABLE OF CONTENTS

Purpose....1

Background on Medical Oversight of Commercial Drivers....1

Survey Scope and Methodology....3

Survey Methodology....3

Survey Limitations....4

Findings....4

Information on Medical Examiner Professional Background....5

Other Survey Findings....7

Conclusions and Recommendations....8

Acknowledgements and Report Information....10

APPENDICES

Appendix I. Example of Mailing....11

Appendix II. Summary Information on Invalid Medical Certificates....14

PURPOSE

One of NTSB's eight recommendations to the Federal Motor Carrier Safety Administration (FMCSA) is to enable enforcement authorities to identify invalid medical certification during safety inspections and routine stops. In recent comments on FMCSA's Notice of Proposed Rulemaking (NPRM), which will require commercial driver-applicants to provide a copy of their medical certificate to the state licensing agency, NTSB also expressed concern that, "because the certificate form is not a controlled document, has no standard appearance, and may be freely reproduced, a means is needed for the State Drivers Licensing Agency (SDLA) to verify that forms submitted by drivers are issued in accordance with existing regulations."[2]

Majority Committee staff conducted this review to identify the extent to which drivers are carrying invalid cards and what challenges enforcement authorities and SDLAs face in determining the validity of commercial drivers' medical certificates.

The staff was also interested in identifying the professional backgrounds of the medical examiners performing these examinations. This task was done for informational purposes only and the Committee currently has no position on which medical professions are qualified to conduct Department of Transportation (DOT) physicals.

The sample we collected of 614 medical certificates is not representative of the entire population of commercial drivers and we are not drawing inferences for the industry as a whole. However, we believe our sample size, supported by the findings of the NTSB and GAO, provide a sufficient basis for the recommendations we are making in this report.

BACKGROUND ON MEDICAL OVERSIGHT OF COMMERCIAL DRIVERS

As a result of a 1999 bus crash that killed 22 people in Louisiana, NTSB made eight safety recommendations to the FMCSA to improve the medical certification process in 2001.[3] In 2003, NTSB added preventing medically unqualified drivers from operating commercial motor vehicles to its list of "Most Wanted" transportation safety improvements. Over the past several years, NTSB has continued to voice concern regarding what it considers significant flaws in the medical certification process for commercial drivers. While NTSB has found FMCSA's responses to three of its recommendations "acceptable," all eight recommendations remain open, and NTSB still considers FMCSA's overall response to the issue "unacceptable."[4]

According to FMCSA, there are approximately 5 million current CDL holders, although all may not be currently operating commercial vehicles. FMCSA requires drivers to pass a prescribed DOT-physical exam, using the "Medical Examination Report for Commercial Driver Fitness Determination,"[5] as a qualification for operating a commercial vehicle in an interstate capacity.

---

[2] Docket No. FMCSA-1997-2210-169 (February 13, 2007).
[3] "Motorcoach Run-Off-The-Road Accident, New Orleans, Louisiana." NTSB/HAR-01/01.
[4] NTSB, "Most Wanted List, Transportation Safety Improvements 2008," (November 2007).
[5] Otherwise referred to as the "DOT Long Form," or "Examination Report." This is available for public access on FMCSA's website.

Commercial drivers must carry a valid medical certificate at all times, which certifies that they have been examined and are medically fit to operate a commercial vehicle. The certificate must be signed by a medical examiner and include: the date of the exam, the examiner's name, license number, phone number, and the certificate expiration date (generally 2 years from the date of the exam, or sooner if the patient has a medical condition which requires more frequent monitoring). The examiner is required to maintain one copy of the certificate, and furnish one each to the driver and the driver's employer (49 CFR §391.43).[6] Currently, 24 States require that the driver present a valid medical certificate and/or the examination form as a precondition for obtaining a CDL.[7] The remaining States require CDL applicants to self-certify that they meet Federal medical requirements.[8]

FMCSA defines a medical examiner as, "a person who is licensed, certified, and/or registered, in accordance with applicable State laws and regulations, to perform physical examinations."[9] This list includes, but is not limited to, Doctors of Medicine (MD), Doctors of Osteopathy (DO), Physician Assistants (PA), Advanced Practice Nurses (APN), and Doctors of Chiropractic (DC).[10] Examiners are not trained on how to conduct DOT physicals; and no registry currently exists of medical professionals who have been certified as qualified to conduct these exams. FMCSA's website suggests drivers use the Internet and Yellow Pages to locate a medical examiner.

A medical certificate is typically a card-sized document (see Figure 1), although it can be as large as a standard sheet of paper. The medical examiner and driver typically hand-write entries into the required fields, though some examiners have certificates with their information preprinted. The card template can be downloaded from FMCSA's website.

Figure 1. Medical Certificate Template from FMCSA's Website

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
- ☐ driving within an exempt intracity zone (49 CFR 391.62)
- ☐ wearing hearing aid
- ☐ accompanied by a Skill Performance Evaluation Certificate (SPE)
- ☐ accompanied by a _____ waiver exemption
- ☐ Qualified by operation of 49 CFR 391.64

I 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

SIGNATURE OF MEDICAL EXAMINER	TELEPHONE	DATE
MEDICAL EXAMINER'S NAME (PRINT)	☐ MD ☐ DO ☐ Physician Assistant ☐ Chiropractor ☐ Advanced Practice Nurse	
MEDICAL EXAMINER'S LICENSE OR CERTIFICATE NO./ISSUING STATE		
SIGNATURE OF DRIVER	DRIVER'S LICENSE NO	STATE
ADDRESS OF DRIVER		
MEDICAL CERTIFICATE EXPIRATION DATE		

[6] Some medical examiners provide the employer's copy to the driver with the understanding that they will give it to their employer.
[7] GAO Report 08-826, June 2008.
[8] According to State responses to Committee's request for information on their CDL requirements.
[9] 49 CFR §390.5.
[10] Some State laws restrict which professions can perform a physical exam.

SURVEY SCOPE AND METHODOLOGY

In March 2007, the Committee initiated an investigation of FMCSA's commercial driver medical oversight program and its vulnerabilities. The Committee requested that the Government Accountability Office (GAO) assist the Committee by conducting a match of current Commercial Driver's License (CDL) holders with Federal medical disability databases in order to identify potential abuses. We also asked GAO to work with Committee staff to develop a methodology for investigating the validity of a sample of medical certificates. In November 2007, Committee staff consulted with GAO's survey design staff to identify the survey methodology that would best fulfill our goal. The Committee conducted data collection, the survey mailing, and validation between June 2007 and June 2008.

Survey Methodology

The staff designed the survey to be conducted in three phases (collection, validation, and verification). The first phase involved collection of medical certificates. Committee staff worked in conjunction with three States that expressed a willingness to cooperate with the project (California, Illinois, and Ohio). Committee staff worked with State law enforcement officials and transportation departments to collect or arrange for the collection of the certificates during their routine inspections of commercial vehicles. Drivers were asked for their certificates and CDL during the inspection and inspectors or committee staff made a photocopy or scanned the card electronically into a laptop computer. The Committee collected a combined total of 614 medical certificates in California, Illinois, and Ohio between June 2007 and November 2007. The size of our sample was limited by Committee time and resources.

In California, the State Highway Patrol copied 261 certificates between two weigh stations over a 2-day period in June 2007. In Illinois, State DOT officers and inspectors and Committee staff collected 223 certificates at several weigh stations during a 3-day period in September 2007. And in Ohio, 130 certificates and copies of the driver's CDL were collected by Committee staff in conjunction with the State Highway Patrol at one weigh station over a 4-day period in November 2007. Each certificate was assigned a unique randomly-generated number. We filed each certificate in numerical order by State and created an Excel database to manage and track each phase of the survey.

The second phase of the survey required Committee staff to "validate" the information on the medical examiner identified on each certificate. To do this, Committee staff attempted to positively identify the existence and address of medical examiners listed on the collected medical certificates by locating their data in State professional licensing databases using the professional licensing number and/or the examiner's name. Staff then located a business address for each medical examiner via an Internet search of the examiner name and telephone number. We were ultimately able to validate 591 of the examiners identified on the 614 cards.

In the "verification" phase, the Committee mailed a copy of the medical certificate and a letter signed by Chairman Oberstar requesting that they certify that the information on the enclosed medical certificate matched the information contained in their files and that the signature was valid. We asked that they initial each field where the data matched that in their files—for example, the date of the exam, the expiration date of the card, the license number, etc. We also asked for an

explanation of fields that did not match their records. We enclosed a self-addressed, stamped envelope for them to return the certificate(s).[11] (A sample package is included in Appendix I.)

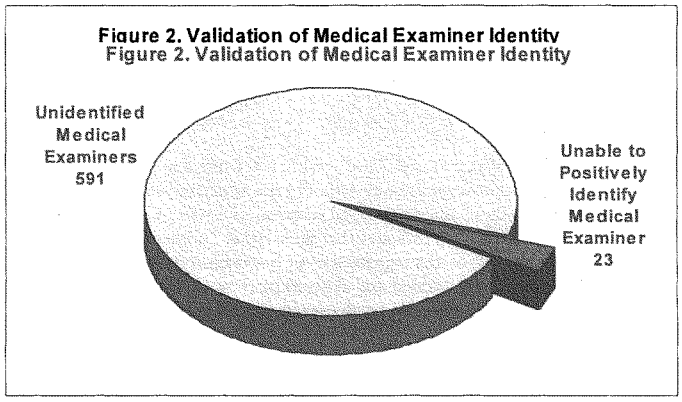
Our mailing response rate was 75 percent, which we believed to be sufficient to be representative of the total mailed sample. As examiner responses were returned, we determined how each should be classified and entered any comments in the Excel database. We filed the returned, initialed, certificates with the original copies.

Survey Limitations

Committee staff acknowledge that the ability to make inferences from our data about the general population of interstate commercial drivers or medical examiners who conduct DOT physical exams is limited by our survey design and sampling methods. A representative data sampling was not possible due to staff resources. The Committee conducted this study in order to gain an understanding of potential issues in the medical certification process and challenges presented to state authorities in verifying medical certificates. Results presented in this report should not be extrapolated beyond the 614 drivers in our sample.

FINDINGS

Of the 614 medical certificates that were collected, Committee staff could not positively validate the existence of 23 examiners (4 percent) because the examiner's name and/or license number could not be positively identified through State licensing databases or Internet searches. We did not include these in our mailed sample.

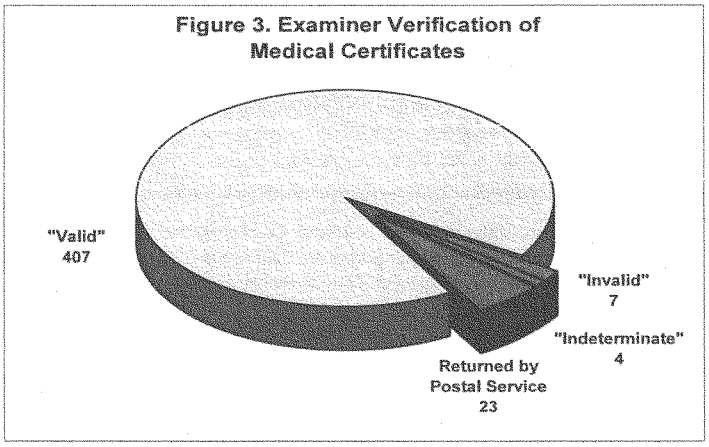


The third phase of the survey was "verification," in which we mailed copies of the certificates to the examiners who "signed" the medical certificates certifying the individual as

[11] In some cases, a medical examiner had performed exams on more than one individual in our sample. Where practicable, we enclosed all exams from that examiner in a single mailing.

medically qualified to operate a commercial vehicle. We asked that they compare the information on the certificate to their own records and verify that the information matched. Of the 591 that were successfully mailed, we received responses from 441 examiners (75 percent).

Of the 441 respondents, 407 (92 percent) were "valid" certificates, meaning the examiner was able to match the certificate to his or her records on file. Seven medical examiners (2 percent) indicated that the certificates were "invalid," whereby the medical examiner indicated that his or her signature was forged, the dates had been altered, or they had no record of the patient in their files. The Postal Service returned 23 as "undeliverable" (5 percent) and 4 were indeterminate (1 percent).[12] Details on the "invalid" responses are included in Appendix II.



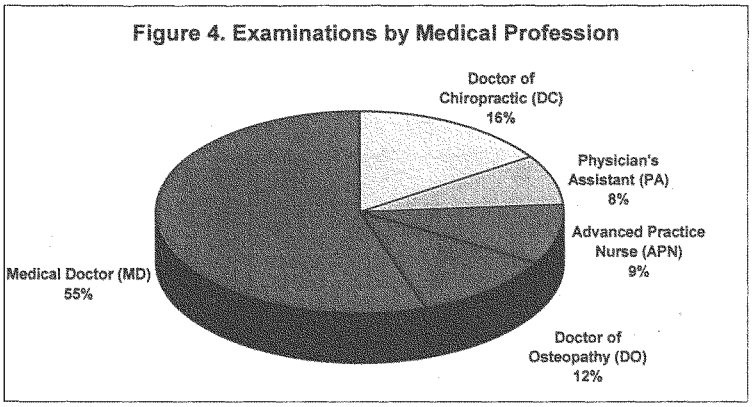
Although only 2 percent of certificates were invalid, it is likely that some or all of the certificates were also falsified where Committee staff could not verify the existence of a medical examiner through State licensing databases or through searches of the Internet. Combining the results of both phases, we identified 30 certificates that were either "unidentifiable" or invalid, representing approximately 5 percent of the original survey population (614 collected certificates). We believe this number may be slightly understated as some portion of the 23 mailings returned by the Postal Service may have included non-existent, deceased, or otherwise non-practicing medical examiners.

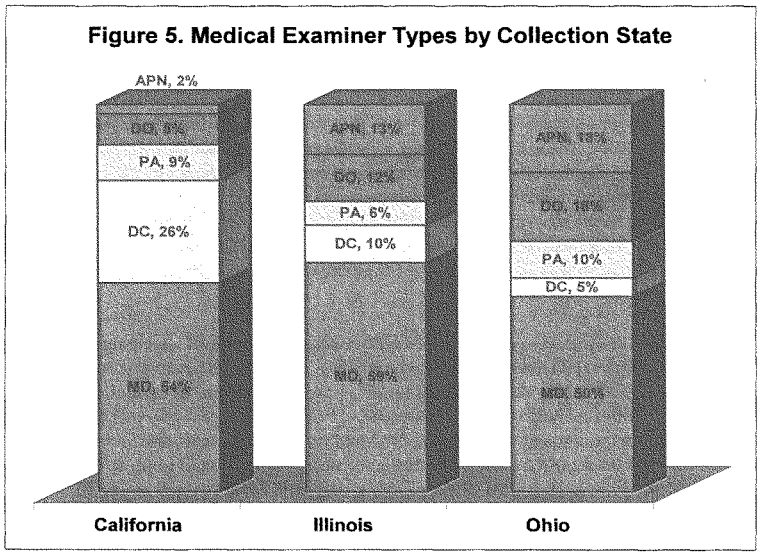
Information on Medical Examiner Professional Background

Our survey found that just over one-half of the DOT physicals were performed by Medical Doctors (See Figure 4). Chiropractors and Doctors of Osteopathy performed 16 percent and 12

[12] "Indeterminate" means that the addressee was no longer at the address where delivered and office staff did not have the means to otherwise verify the certificate information.

percent, respectively. As Figure 5 shows, the types of medical professionals performing the DOT physicals varied between States.





There were 536 unique medical examiners, meaning that 41 medical examiners identified on the certificates were signed by one or more of the 614 certificates collected. One particular

chiropractor in California certified 11 drivers in the sample. A total of 25 drivers, accounting for 10 percent of the California sample, had certificates from examiners in that practice.

Other Survey Findings

Nine medical certificates collected were found to be expired upon collection, although in most cases the medical examiners were able to verify that the certificates were legitimate. Table 1 illustrates the range of expiration lapses found in the survey, based on the collection date.

Table 1. Expired Medical Certificates

No.	State Sampled	Driver State	Expiration Date	Elapsed Time
179	Illinois	Missouri	09/03/05	24 months
194	California	California	05/19/06	12.5 months
78	Illinois	Illinois	12/02/06	9 months
108	California	Oregon	01/12/07	4.5 months
69	Illinois	Illinois	06/05/07	3 months
198	Illinois	Missouri	07/06/07	2 months
122	Ohio	Ohio	09/08/07	2 months
130	California	California	05/27/07	1 month
178	Illinois	Idaho	07/29/07	1 month

In Ohio, it was observed by Committee staff that two drivers did not have their medical certificate with them during the inspection. They were instructed to contact their employer and have them fax a copy of the driver's medical certificate to the weigh station. We do not have information on the number of drivers in the other states who did not have certificates with them. FMSCA cites that 1 in 16 commercial drivers did not have a medical certificate in their possession during a roadside inspection in 2007.[13] The inspector has the ability to issue a citation to a driver without a certificate, though this violation does not require the inspector to take the driver out of service.

Several medical examiners contacted Committee staff as a result of receiving the mailing and raised concerns and expressed frustrations with the medical certification process. One doctor in Ohio, Robert O'Desky, DO, MS, who estimates that his practice performs at least 100 DOT-exams per week, believes certificate fraud may be widespread. "Forgery on cards is so commonplace...no one gets alarmed about it anymore." He added, "I would wager that at least once a week we run into someone who has been issued a card who has no business driving...and in most instances they have no idea that they have no business driving," citing such problems as sleep apnea and cardiovascular disease.

[13] FMCSA Analysis and Information website, "Top 20 Driver Violations for Calendar Year 2007." <http://www.ai.fmcsa.dot.gov>

In addition, many medical examiners were frustrated that if a driver fails a medical exam with one doctor, they could simply go to another examiner who they felt would be more apt to certify them, and no authority would be aware of this. This concern of "examiner hopping" was shared by the American College of Occupational and Examiner Medicine in their comments on the NPRM,[14] stating that the rule would do little to prevent this from happening.

CONCLUSIONS AND RECOMMENDATIONS

Based on this exercise, Committee staff concluded that several inherent weaknesses exist in the medical certificate verification process. These include:

- An absence of controls over the medical certificate itself make it relatively easy for a motivated commercial driver to circumvent the physical examination requirement. The driver can download the template off of FMCSA's website, enter the name and license number of a medical examiner – either fictitious or real — and forge a signature. In most cases, the certificates that were determined to be invalid in our survey or where we found that the examiner did not exist looked no more suspicious than the ones that were confirmed to be valid. The Federal Aviation Administration (FAA) makes it very difficult for pilots to fabricate a medical certificate by strictly controlling access to the physical certificates. The only individuals who have access to the certificates are Aviation Medical Examiners, who are trained, tested, and certified by FAA.

- Although FMCSA offers a prototype of a medical certificate on its website, there is no requirement that it be used. This can result in a multitude of different certificate designs making identification of fraudulent certificates more difficult.

- Currently, there is no database or central repository which would allow inspectors to verify the legitimacy of a medical certificate. The process an inspector would need to use to validate a medical certificate obtained during a roadside inspection is cumbersome and in many cases, impractical. Assuming the inspector can even read the certificate – many are handwritten and illegible – he or she would need to call or send a fax to the examiner and request verification. This requires reaching the examiner, which is unlikely if the inspection is occurring outside regular business hours. If the examiner *is* available, the inspector would need to provide proof of identification and convince the examiner that he or she is authorized to obtain this information. Inspectors told Committee staff that given their limited resources, they are more likely to put a higher emphasis on other components of the roadside inspection, including the inspection of the commercial vehicle and reviewing the driver's hours of service logs.

- Few incentives exist to obtain a legitimate medical certificate. Because so few attempts are made to authenticate a certificate, there is little risk that a driver will be caught if he or she forges or adulterates a certificate. And there is no real disincentive to fabricating or adulterating a certificate. Even if an inspector is able to confirm that a medical certificate is

[14] Docket No. FMCSA-1997-2210-0178 (February 15, 2007).

expired, forged, or that the driver simply does not have a certificate, it is not an out-of-service offense. The inspector can cite this failure in the inspection report, but cannot detain the driver, unless he or she obviously poses a safety threat. FMCSA says that inspectors will cite medical card violations in inspection reports, which it uses to identify high-risk carriers; however, FMCSA conducts so few compliance reviews each year that higher priority violations—such as accidents or equipment violations—outweigh risk associated with medical card violations in targeting companies for reviews.

The Federal Aviation Administration Application for an Airman Medical Certificate requires applicants to sign a declaration stating, "I hereby certify that all statements and answers provided by me on this application form are complete and true to the best of my knowledge, and I agree that they are to be considered part of the basis for issuance of any FAA certificate to me." This statement is adjacent to a notice stating, "Whoever in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals or covers up by any trick, scheme, or device a material fact, or who makes any false, fictitious, or fraudulent statements or representations, or entry, may be fined up to $250,000 or imprisoned not more than 5 years, or both," (18 U.S.C., Sec. 1001).

To address these shortcomings, Committee staff recommends that FMCSA be directed to take the following actions:

1. Complete its rulemaking linking medical certification to the commercial licensing process. While there are flaws in the proposed rule, it will provide inspectors with the ability to confirm whether a driver has a medical certificate that is current on file with the State. The NPRM does not, however, allow authorities to confirm that the certificate provided to the State is valid. The Louisiana Department of Public Safety commented on this problem in the proposed rulemaking by saying, "This proposal in no way "validates" a medical. The fact that the certification is completed does not mean the driver is qualified . . . or the person who completes it is actually a medical person..."[15]

2. Develop a standard medical certificate template that is distinctly different in design and appearance than the current template available on its website. FMCSA should not put this template in the public domain.

3. Expedite its rulemaking establishing the National Registry of Certified Medical Examiners. Once established, FMCSA will be able to control access to the standard certificate template by making it available only to examiners in the National Register, similar to the FAA model. The new standard medical certificate should not be introduced until these controls are in place.

4. Pursue NTSB's recommendation to create a central repository for medical examiners to report the results of their examinations. The benefits of this would be two-fold: 1) it would eliminate SDLA reliance on drivers to provide proof that they meet FMCSA's medical requirements; and 2) examiners conducting DOT-physicals could verify whether an individual has previously been denied a medical certificate.

[15] Docket No. FMCSA-1997-2210-0178 (January 17, 2007).

5. Amend the medical certification template to include a declaration regarding the truthfulness of all statements and answers provided to the medical examiner during the DOT medical examination and require the driver's signature acknowledging the potential penalties that could be incurred for violating the False Statements Act (18 U.S.C., Sec. 1001).

ACKNOWLEDGEMENTS AND REPORT INFORMATION

This report was compiled at the request of the Chairman of the Committee on Transportation and Infrastructure, James L. Oberstar. The findings include the results of data collected by Majority Committee staff in conjunction with state officials. This report reflects source data and information contained in a variety of studies, agency documents and reports, Government databases, media accounts, Federal statutes and regulation, and other source material which is referenced accordingly throughout this report. Additional copies of this report may be obtained from the Committee's website at http://transportation.house.gov or by contacting the Committee's communications office at 202-225-6260.

The Committee wishes to thank the individuals and agencies that provided information and assisted Committee staff in conducting the survey: The California Highway Patrol, the Illinois Department of Transportation and State Police, the Ohio Department of Transportation and the Ohio State Highway Patrol. We also want to thank staff from the Government Accountability Office who advised us on survey methodology and the Congressional Research Service who helped us analyze our results.

Appendix I. Example of Mailing

U.S. House of Representatives
Committee on Transportation and Infrastructure

James L. Oberstar
Chairman

Washington, DC 20515

John L. Mica
Ranking Republican Member

David Heymsfeld, Chief of Staff
Ward W. McCarragher, Chief Counsel

May 2, 2008

James W. Coon II, Republican Chief of Staff

Larry [redacted], MD
[redacted] SW
[redacted], AL 350[redacted]

Dear Dr. [redacted]

Based on investigations of accidents involving commercial motor vehicle drivers with serious medical conditions, the National Transportation Safety Board ("NTSB") has determined that serious flaws exist in the medical certification process for commercial vehicle drivers.[1] These flaws can lead to increased highway fatalities and injuries for commercial vehicle drivers, their passengers, and the motoring public. The U.S. House of Representatives' Committee on Transportation and Infrastructure is evaluating the medical oversight program for commercial drivers in the hopes of making our roadways safer. We are asking that you take a few minutes to cooperate with this effort.

The current Federal Motor Carrier Safety Administration ("FMCSA") regulations require Interstate commercial drivers to have on their person a copy of a signed medical certificate verifying that they have been deemed medically fit to operate a commercial vehicle.[2] In most cases, however, enforcement authorities cannot determine the validity of a medical certificate during safety inspections and routine stops because of the absence of procedures or information to validate the medical certificate. In 2003, the NTSB added a recommendation to its "Most Wanted List" of transportation safety improvements that FMCSA develop a program to enable law enforcement to authenticate medical certificates during safety inspections and routine stops. To date, NTSB finds FMCSA's response to this recommendation "unacceptable".[3]

In September 2007, Transportation and Infrastructure Committee staff, in conjunction with the State highway patrol and the department of transportation, collected a sample of Department of Transportation ("DOT") medical certificates from commercial drivers during routine roadside inspections in Illinois. One or more of those certificates indicated that you, or a medical professional from your practice, performed a DOT medical examination and declared (via signature)

[1] "Highway Accident Report: Motorcoach Run-Off-The-Road, New Orleans, Louisiana, May 9, 1999;" adopted on 8/28/2001; NTSB Report Number: HAR-01-01.
[2] 49 CFR 391.41.
[3] "Most Wanted Transportation Safety Improvements, Highway," National Transportation Safety Board, November 2007, <http://www.ntsb.gov/Recs/brochures/MostWanted_2008.pdf>

Original Assigned Number: 116

on the driver's medical certificate that the driver was medically qualified to operate a commercial motor vehicle during the period identified on the medical certificate.

We are asking for you to verify that your name, occupation, license number, examination date, and expiration date, as it appears on the enclosed certificate(s) are consistent with the information in your files, and that the signature and expiration date on the certificate are valid.

Please review the enclosed medical certificate(s) and initial each field that is consistent with records maintained in your files. Please attach a brief type-written or legible hand-written explanation if you cannot match any of the information to your files or if any information is inconsistent with your records. Please do *not* provide any additional information pertaining to individuals' medical conditions. We are *not* attempting to verify that that the driver is medically qualified to operate a commercial motor vehicle; we are only attempting to verify that that the medical certificate is valid.

We ask that you return the information to the Committee, in the enclosed envelope, postmarked by May 19, 2008. Any information you provide will be considered confidential. Committee staff or investigators from the Government Accountability Office, which is assisting the Committee on this project, may follow-up in person or by telephone in the next few weeks to verify your responses.

Thank you in advance for your cooperation. If you have any questions you may call [redacted] of the Committee staff at (202) 226-4697. The medical licensing board in your state has been notified of this investigation and has received a pro-forma copy of this letter.

Sincerely,

Jim Oberstar

James L. Oberstar, M.C.
Chairman

Appendix I. Example of Mailing

I-116

MEDICAL EXAMINER'S CERTIFICATE

I certify that I have examined Larry V [redacted] 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
- ☐ Qualified by operation 49 CFR 391.64
- ☐ driving within an exempt intracity zone (49 CFR 391.62),
- ☐ accompanied by a Skill Performance Evaluation Certificate (SPE)
- ☐ accompanied by a _____ waiver/exemption

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

Signature of Medical Examiner	Telephone	Date
[illegible]	205 791-[redacted]	12-15-08

Medical Examiner's Name (print): Larry V [redacted]

☐ MD ☐ DO ☐ Chiropractor ☐ Physician Assistant ☐ Advanced Practice Nurse

Medical Examiner's License or Certificate No. / Issuing State: DO[redacted] / AL

Signature of Driver	Driver's License No.	St
	[redacted]	TX

Address of Driver: P.O. Box [redacted] [redacted] TX

Medical Certificate Expiration Date: 12/15/10

Appendix II. Summary of Invalid Records

The following medical certificates have been flagged as "invalid". In these cases, the medical examiner responded that the certificate they were asked to validate did not match the records on file and indicated suspicious behavior on the part of the CDL holder.

No.	Driver State	Details
OH-3	Ohio	The medical examiner wrote, "I have no idea who this patient is – I do not find him in our system."
OH-52	New Jersey	While some of the information was valid, the examiner offered, "[the] name is wrong. This is not my signature or handwriting."
OH-91	Ohio	The Office Coordinator wrote, "We do not have any supporting documentation to verify that the above mentioned patient was seen in our office on 12/1/2006. The Ohio License Number listed on the attached form for [the Doctor] is incorrect."
CA-254	California	The Doctor wrote, "We have no record of this patient. We have a Book for our DMV examinations and we don't have this patient."
IL-6	Illinois	The Doctor wrote, "This person was not seen in my facility on that day or anytime around that day. Furthermore, I do not recognize any of the handwriting on the certificate, and in particular, that is definitely not my signature as medical examiner."
IL-41	Oklahoma	The office staff wrote, "We have no record of this DOT card. The signature is not physician's."
IL-78	Illinois	The medical examiner verified his own signature and confirmed that the patient was examined and certified on December 2, 2004. However, the Doctor wrote, "This DOT Card has been altered in which the Medical Certificate expiration date has been changed from 12/2/06 to 12/2/08."

National Transportation Safety Board

490 L'Enfant Plaza, SW
Washington, D.C. 20594
(202) 314-6000

Dr. Mitchell A. Garber
Medical Officer

Testimony of
Mitchell A. Garber
Medical Officer
National Transportation Safety Board
before the
Committee on Transportation and Infrastructure
U.S. House of Representatives
"FMCSA's Progress in Improving Medical Oversight of Commercial Drivers"
July 24, 2008

Good afternoon, Chairman Oberstar, Ranking Member Mica, and Members of the Committee. Thank you for allowing me the opportunity to present testimony on behalf of the National Transportation Safety Board regarding Improving Medical Oversight of Commercial Drivers. It is a privilege to represent an agency that is dedicated to the safety of the traveling public.

On May 9, 1999, on Mother's Day in New Orleans, a commercial driver lost consciousness while driving a motorcoach on an interstate highway, left the roadway, and crashed into an embankment, killing 22 passengers, and seriously injuring the driver and 15 additional passengers (NTSB accident number HWY99MH017). The driver was found to have had multiple known serious medical conditions, including end-stage kidney failure for which he was receiving dialysis 3 hours a day for 3 days a week, and congestive heart failure for which he was receiving intravenous outpatient therapy for 3-4 hours a day, 3 additional days a week. He had seen dozens of health care providers over the previous 2 years, and had been issued a commercial driver's license medical certificate 9 months prior to the accident, in spite of having noted treatment for congestive heart failure on his application and having protein found in his urine at that time.

The Safety Board has investigated many other accidents involving commercial drivers with very serious preexisting medical conditions that had not been adequately evaluated. A sampling of such accidents are noted in the table below:

NTSB accident number	Location	Circumstances	Driver medical condition(s)
HWY98FH004	Franklin, NC	Load broke free from tractor-trailer due to excessive speed, killed driver and a child in a school activity bus	Alcohol dependence
HWY98FH019	New York, NY	Transit bus injured cyclist, killed pedestrian (driver had	History of seizures, multiple other medical

		seizure)	conditions
HWY98MH022	Buffalo, MT	School bus struck by train, 2 children killed	Keratoconus (nearly blind)
HWY00FH001	Central Bridge, NY	School bus drove through stop sign, struck by dump truck, two students critically injured, three others and two adults seriously injured	School bus driver with poorly controlled diabetes, episodes of congestive heart failure
HWY00IH046	Jackson, TN	Tractor-trailer ran over Highway Patrol vehicle, killed State Trooper	Sleep apnea, untreated hypothyroidism
HWY01IH024	Bay St. Louis, MS	Motorcoach ran off of an on-ramp at a high rate of speed, multiple injuries	Uncontrolled insulin-diabetes, forged medical certificate
HWY04MH038	North Hudson, NY	Tractor-trailer struck the back of a long line of stopped vehicles, killing 4 vehicle occupants	Obesity-hypoventilation syndrome

The Safety Board is not surprised by the findings of the Government Accountability Office study. Their findings mirror our own. The Safety Board, of course, investigates only a limited number of highway accidents and it is often the case that driver medical conditions might not be identified as a factor in such accidents absent the Board's extensive investigations and broad authority in conducting such investigations. It is important to note that the Board does not maintain statistics that would allow us to estimate the overall prevalence of such conditions in accident-involved populations or in the general driver population, but I can tell you that it is actually unusual in our accident investigations to find a commercial driver for whom there are not at least some questions regarding medical certification. This is not to say that the drivers' conditions always cause the accident, but finding these undocumented and unevaluated conditions in commercial drivers is concerning and often alarming. In many cases, these conditions, if they had been appropriately evaluated, treated and monitored, would not prevent the safe operation of a commercial vehicle. Unfortunately, because of a wide variety of deficiencies in the oversight of commercial driver medical certification, no such evaluation, treatment, or monitoring occurred in many of the cases we investigated.

As a result of observing serious deficiencies in the oversight of commercial driver medical certification in several of our investigations, the Safety Board issued recommendations to the Federal Motor Carrier Safety Administration (FMCSA) in 2001 to develop a comprehensive medical oversight program for interstate commercial drivers that included the following elements:

- Individuals performing medical examinations for drivers are qualified to do so and are educated about occupational issues for drivers. (H-01-17)
- A tracking mechanism is established that ensures that every prior application by an individual for medical certification is recorded and reviewed. (H-01-18)

- Medical certification regulations are updated periodically to permit trained examiners to clearly determine whether drivers with common medical conditions should be issued a medical certificate. (H-01-19)
- Individuals performing examinations have specific guidance and a readily identifiable source of information for questions on such examinations. (H-01-20)
- The review process prevents, or identifies and corrects, the inappropriate issuance of medical certification. (H-01-21)
- Enforcement authorities can identify invalid medical certification during safety inspections and routine stops. (H-01-22)
- Enforcement authorities can prevent an uncertified driver from driving until an appropriate medical examination takes place. (H-01-23)
- Mechanisms for reporting medical conditions to the medical certification and reviewing authority and for evaluating these conditions between medical certification exams are in place; individuals, health care providers, and employers are aware of these mechanisms. (H-01-24)

The Board's recommendations specify a comprehensive oversight program because we feel that only by addressing this issue in a systematic fashion can a truly effective program of oversight be developed. A piecemeal approach to the problem may result in gaping deficiencies that will continue to permit unqualified drivers to operate on the nation's highways. For example, even if all the other elements are in place, if no tracking mechanism exists, drivers who wish to will be free to obtain exam after exam until finding an examiner that will certify them.

In 2003, because of the critical importance of this issue and the lack of substantive progress on the recommendations, this issue was placed on the Board's Most Wanted List of Transportation Safety Improvements and it has remained there ever since. Although the FMCSA has in place a Medical Review Board and taken certain other preliminary actions in response to Congressional mandates, there are still areas in which absolutely no measurable progress has been made. For example, there has been no apparent attempt to develop a mechanism for reporting medical conditions in between examinations. Unlike aviation, where a concerned physician, family member, or employer knows to contact the Federal Aviation Administration with worries about the medical condition of a pilot, there is still no straightforward process by which an unhealthy commercial driver may be readily reported. In spite of limited progress, the commercial driver medical oversight system is no more robust now than it was nearly 10 years ago when the recommendations were first issued. The majority of the recommendations in this area are currently classified as "open - unacceptable response" and the current classification of the entire issue is considered to represent overall unacceptable progress. To paraphrase a previous Safety Board Chairman -- it is not that the current system is broken so much as that no viable system of medical oversight of commercial drivers currently exists. That is as true now as it was when the recommendations were issued. Though the FMCSA does seem to be making progress toward the type of comprehensive oversight system envisioned by the Safety Board, it remains to be seen whether such a system will in fact be developed.

This concludes my prepared statement and I will be happy to answer any questions you may have.

Office of the Chairman

Nati nal Transportation Safety Board

Washington, D.C. 20594

August 28, 2008

Honorable James L. Oberstar
Chairman
Transportation and Infrastructure Committee
U.S. House of Representatives
2165 Rayburn House Office Building
Washington, D.C. 20515

Dear Chairman Oberstar:

Thank you for your letter of August 6, 2008, transmitting supplementary questions for response from the National Transportation Safety Board regarding issues from your July 24, 2008, full committee hearing on "FMCSA's Progress in Improving Medical Oversight of Commercial Drivers."

Enclosed please find the Safety Board's responses to your and Congressman Duncan's questions.

If you have any questions or concerns, please do not hesitate to call me at (202) 314-6035, or Ms. Brenda Yager, Director of Government and Industry Affairs, at (202) 314-6006.

Sincerely,

Mark V. Rosenker
Acting Chairman

Enclosure

cc: Congressman John J. Duncan, Jr.

NATIONAL TRANSPORTATION SAFETY BOARD
RESPONSES TO QUESTIONS FOR THE RECORD
HONORABLE JAMES L. OBERSTAR
HONORABLE JOHN J. DUNCAN, JR.
TRANSPORTATION AND INFRASTRUCTURE COMMITTEE
HEARING ON "FMCSA'S PROGRESS IN IMPROVING MEDICAL OVERSIGHT OF COMMERCIAL DRIVERS"
JULY 24, 2008

Chairman Oberstar:

1. Of the 5 recommendations you made in 2001 that FMCSA has not addressed, which is the most serious and why?

    - **RESPONSE:** The Safety Board's recommendations are the minimum components that the Board finds are necessary for the establishment of a comprehensive medical oversight system. The exclusion of any one of the components would leave the system incomplete and vulnerable to serious safety deficiencies. The Board feels that each of the components is critical, and is therefore reluctant to identify any one particular recommendation as primary.

2. What does the NTSB think about NHTSA/FMCSA's estimate of 3% of truck crashes are due to medical conditions:

    - **RESPONSE:** This estimate comes from the Large Truck Crash Causation Study, which is an extraordinary and important evaluation of thousands of crashes across the Nation, with an eye toward collecting data on some of the most critical factors in large truck crashes. It is undoubtedly a minimum estimate, as it is derived by dividing the number of crashes in which medical conditions were identified over the total number of crashes evaluated. The actual numbers may be considerably higher.

        In over 500 of those crashes, the data indicates that information regarding medical conditions was "unknown," and even if those crashes are merely excluded from the total, the percentage rises to 4%. If a substantial number of those crashes were due to a medical condition, the percentage would be even higher.

        Substance dependence is not regarded in that data as a medical condition. It can reasonably be argued that commercial drivers using alcohol or other potentially addictive substances while driving could be considered to meet the definition for substance dependence, and inclusion of those drivers would triple the number regarded as involving medical conditions.

Though the study made every attempt to gather appropriate information regarding medical conditions in drivers, it is entirely possible that in many such accidents, the information gathered was insufficient to identify medical issues, even where they were pertinent. The Safety Board often has to invoke subpoena authority in order to conclusively establish even the presence of a potentially impairing or incapacitating condition.

3. Our staff surveyed more than 600 commercial drivers this year and found that only about one-half of the exams are being done by medical doctors. Do you have any concerns with this?

   - **RESPONSE:** The Committee staff survey notes that 55% of exams for which a survey was returned were performed by individuals with a Doctor of Medicine (M.D.) degree and 12% by individuals with a Doctor of Osteopathy (D.O.) degree. The two degrees are essentially equivalent, and in many states, are overseen by the same agency. The survey noted that 16% of those exams for which a survey was returned had been performed by an individual licensed as a Doctor of Chiropractic (D.C.), 9% by an advanced practice nurse (APN) and 8% by a physician's assistant (PA). To a certain extent, this probably represents the distribution of practitioners permitted by the states surveyed to perform examinations, though chiropractors are certainly over-represented, particularly in California. As noted below, though all of these groups are likely sufficiently qualified to perform a physical examination, not all of the individuals will be equally capable of making an appropriate determination of medical fitness. In particular, chiropractors may be in an especially weak position regarding determinations of suitability of particular medications for use by commercial drivers.

4. Do you have any sense of what type of professionals should be performing examinations for CDL medical certification?

   - **RESPONSE:** The Board notes that there is a difference in the technical capabilities required in collecting information and performing a physical examination, and the analytical skills required to make an appropriate evaluation regarding the medical fitness of a driver. Even a non-medical professional can be trained in the former; the latter requires both a background sufficient to understand the medical issues involved and knowledge of the application of those issues in the operational environment. Thus anyone can collect the information, but the individual or organization making the ultimate determination must have sufficient background in both clinical and occupational medicine to make the evaluation. Most non-physicians have no occupational medicine training, and most physicians have very little. Several states have occupational medicine physicians that can or will review medical certification applications by commercial drivers, but most of the current decision-making regarding medical certification of commercial drivers that is not made at a state review level is not being made by qualified individuals.

5. How important is a background in pharmacology in evaluating the medical fitness of a driver with a medical condition? Do chiropractors have this background?

    - **RESPONSE:** Because of the extensive use of medications by the U.S. public in general and the driving population in particular, it is common that the fitness evaluation of a driver will involve the determination of the effects of one or more medications on the driver's ability to safely operate a commercial vehicle. Practitioners of chiropractic medicine do not typically receive any training in pharmacology, and do not have prescribing authority in any state, so they do not have any experience with the use of medications in the treatment of medical conditions. They are thus not generally suited to making that specific type of determination.

6. The FMCSA just completed a "role delineation study" as a step towards a national registry of certified medical examiners for commercial drivers -- do you see this as a significant achievement?

    - **RESPONSE:** It is uncertain what the effect of this study will be. Of concern, the study is not reflective of the population of potential examiners. More than 70% of those eligible under current guidelines to perform examinations for commercial driver medical certification are physicians (M.D.s or D.O.s), but only about one-third of the participants in the role delineation study were physicians. The FMCSA identified this study as a critical step in the establishment of requirements for qualifications of examiners in the National Registry, but it is unclear what the study added beyond what could have been determined from interviews of qualified experts on the topic.

7. FAA has a robust program for medical evaluation of pilots. Can you compare the Aviation Medical Examiner program to what FMCSA has in place now?

    - **RESPONSE:** The FAA program includes each of the elements that the Safety Board has identified as critical to an effective medical oversight system, though the Board has noted previously that the system would be strengthened by additional reporting requirements between examinations. The FMCSA program currently includes none of those elements, though measurable progress is being made on updating the regulations and ensuring appropriate enforcement capabilities.

8. Do you think it would be possible to replicate the FAA model in the motor carrier industry?

    - **RESPONSE:** In the sense that a comprehensive oversight program can be developed that contains all of the elements recommended, yes. It will likely not be identical to the FAA model, as CDL issuance ultimately falls to the states, and the number of required exams is likely too large for a completely centralized model.

9. A study sponsored by FMCSA in 2002 found that 28 percent of commercial drivers have mild to severe sleep apnea. What is the relationship between sleep apnea and the safe operation of commercial vehicles?

    - **RESPONSE:** Studies clearly demonstrate a link between obstructive sleep apnea (OSA) and a substantially increased risk of motor vehicle accident involvement. In addition to the simple and substantial risk of falling asleep while driving that is associated with the fatigue induced by OSA, there is a reduced ability in many psychomotor and cognitive abilities that likely reduces the driver's ability to recognize, evaluate, and avoid hazards. Appropriate treatment eliminates or substantially reduces many of these risks.

10. How do GAO's findings support or illustrate your findings and recommendations in 2001?

    - **RESPONSE:** Both the accident experience of the Safety Board and the GAO's findings demonstrate that drivers may be inappropriately evaluated and identified as medically qualified in spite of clear evidence to the contrary, may be able to easily falsify medical certification, may be able to operate in the absence of medical certification, and may not be reported to certification authorities even when their conditions are known to others.

11. In any of your commercial vehicle accident investigations, have you ever found a driver that was receiving medical disability? Is that something you look for? Do you see any benefit to looking?

    - **RESPONSE:** The Safety Board does not specifically evaluate whether a driver was receiving disability, as that evaluation is independent of our determination as to whether a driver should have been medically certified. The Board has no basis to determine whether a routine evaluation of that sort might be useful from an enforcement standpoint.

12. NTSB's most wanted list has recommendations for all transportation modes. How does FMCSA's response to its own recommendations compare to responses to other agencies?

    - **RESPONSE:** The FMCSA is in the lowest percentage range of acceptable responses, due in large part to the "Open—Unacceptable Response" status on 5 of the 8 medical recommendations issued as a result of our investigation of the 1999 New Orleans, Louisiana, accident. Because the FMCSA is a much younger agency than other DOT modal agencies, the Board also looked at FMCSA's response rate over the past 10 years. As shown on attachment 1 -- the status of the Safety Board's recommendations, which includes the acceptance rate percentage for each DOT modal agency -- the FMCSA's response rate improves slightly from 75.81 to 76.5 percent.

13. What term or terms would you use to describe the pace of FMCSA's responses to your recommendations?

    - **RESPONSE:** The Board continues to be concerned by the slow progress made towards addressing its recommendations on the Most Wanted List of Transportation Safety Improvements. The recommendation to improve the safety of motor carrier oversight (H-99-6) was issued 8 years ago. While the FMCSA has made potentially viable plans to address this recommendation under the CSA 2010 Initiative, we are concerned with the length of time it has taken. The Board will continue to vigilantly monitor the FMCSA's actions to recognize the importance of driver and vehicle factors in addressing motor carrier safety as the CSA 2010 pilot test is deployed. We are also disappointed in the lack of progress made in addressing the recommendations to establish a comprehensive medical oversight program. These recommendations were issued 7 years ago, and while some progress has been made, it has been very slow. The overall system of commercial motor vehicle driver medical certification is no more effective this year than last.

Congressman Duncan:

1. In your testimony, you provide examples of commercial drivers involved in accidents who had preexisting medical conditions. You later say that it is often the case that "driver medical conditions might not be identified as a factor in such accidents." Are the accidents listed in the chart provided in your written testimony directly caused by the driver's medical conditions?

    - **RESPONSE:** Four of the 7 accidents listed in that chart indicate the driver's medical condition as causal or contributing to the cause of the accident. The other 3 were not investigated in order to determine probable cause nor was there a specific determination of probable cause made for those accidents. In each of those 3 accidents, however, the Board's reports make clear that the medical conditions were highly relevant to the accident.

2. Why do you think the majority of NTSB's eight recommendations have not been addressed and are classified as "open-unacceptable response?" What would expedite the process of addressing these recommendations?

    - **RESPONSE:** The Safety Board does not know the reason the FMCSA has not addressed those 8 recommendations. The FMCSA indicates that it understands the importance of the issue and continues to promise action on each of the recommendations, but routinely fails to meet timeliness that it has established for such action. Given that the FMCSA has missed such timelines even on those actions required and funded by Congress, it is unclear what is necessary to accelerate such action.

3. How many NTSB investigations have involved commercial drivers with serious preexisting medical conditions that had not been adequately evaluated?

    - **RESPONSE:** The Safety Board does not evaluate the medical condition of the driver in every accident it investigates, as many accidents involve only limited evaluations of some other specific issue, and some others are determined after initial evaluation to not involve issues of sufficient magnitude to justify a comprehensive evaluation. Of the 4 or 5 per year evaluated in sufficient detail to assess medical qualifications, over half of the commercial drivers are typically found to have serious pre-existing medical conditions that had not been adequately evaluated. In the last 20 major accident investigations (attachment 2) completed by the Board, 12 accidents involved drivers who possessed commercial driver licenses. Of those 12 investigations, 7 involved drivers who either lacked a required current medical certificate or had medical conditions that were either unevaluated or insufficiently evaluated to establish the drivers' medical qualification. In two of these investigations, the drivers' medical conditions were either noted as causal or contributory to the accident. In one other accident involving a driver engaged in commercial activities who did not require a CDL, the Safety Board found that an unevaluated medical condition (obstructive sleep apnea) was causal to the accident.

4. If you were responsible for implementing the 3 medical initiatives of FMCSA (the national registry, the linking of the medical certificate with the CDL, and improving the medical standards) in what order would you implement them?

    - **RESPONSE:** Because the Safety Board is convinced that a medical oversight system must be comprehensive, and must, as a minimum, contain the elements identified in the Safety Board recommendations, we feel that all of the Board's recommendations in this area need to be satisfied. The rule merging the medical certificate with the CDL addresses only enforcement, the Medical Review Board only addresses updating regulations, and the FMCSA has not yet published an NPRM for the National Registry, so it is unclear to what extent the anticipated rule will be able to address many of the recommendations. For example, if all driver medical certificate applications are not recorded, there is no mechanism to detect a driver who goes to multiple practitioners in an attempt to find one who will sign a medical certificate. The Board's recommendations on this issue will be satisfied only when all of the elements of a comprehensive medical oversight system are in place.

Attachment 1

NTSB SAFETY RECOMMENDATION ACCEPTANCE RATES
JANUARY 1, 1998 TO AUGUST 8, 2008

Agency	10-year acceptance rate	Total acceptance rate
FAA	79.9%	81.6%
FHWA	100 %	89.0%
FMCSA	76.5%	75.8%
FRA	85.5%	75.8%
FTA	93.8%	82.6%
NHTSA	100 %	89.1%
PHMSA	96.9%	97.2%
RSPA	87.8%	73.2%
USCG	81.9%	72.6%

Attachment 2

MOST RECENT MAJOR HIGHWAY ACCIDENT INVESTIGATIONS

1. Elmwood Park, IL - grade crossing accident - (NON-COMMERCIAL DRIVERS)
2. Sulphur Spring, TX - rear end chain reaction accident - (POORLY CONTROLLED DIABETES IN TRACTOR-TRAILER DRIVER)
3. Arlington, VA - trash truck/school bus sideswipe accident - (SCHOOL BUS DRIVER W/O CURRENT MEDICAL)
4. Chelsea, MI - work zone accident - (BYPASS SURGERY – NOT RE-EVALUATED)
5. Boston, MA - tunnel ceiling collapse - (NON-COMMERCIAL DRIVER)
6. Wilmer, TX – Hurricane Rita/bus fire accident - (DIABETES NOT EVALUATED)
7. Alexandria, VA - bus driver on cell phone accident - (NO MEDICAL CONDITIONS IDENTIFIED)
8. Golden, CO - bridge girder collapse - (NON-COMMERCIAL DRIVER)
9. Hampshire, IL - rear end/toll plaza accident - (EXPIRED MEDICAL CERTIFICATE FOR ONE DRIVER)
10. Linden, NJ - median crossover accident - (NON-COMMERCIAL DRIVER)
11. Glen Rock, PA – dump truck/brake accident - (NOT A LEGAL COMMERCIAL DRIVER – DRUG ABUSE)
12. Fairfield, CN - multi vehicle/Yale students accident - (NO MEDICAL ISSUES FOR COMMERCIAL DRIVER)
13. North Hudson, NY I and North Hudson, NY II - border control point on interstate accidents - (I – NO MEDICAL INFORMATION OBTAINED; II – OBESITY HYPOVENTILATION SYNDROME)
14. Hewitt, TX - wet roadway/bus accident - (BUS DRIVER – HIGH BLOOD PRESSURE CONTROLLED)
15. Belgrade, MT – truck/student drivers accident - (COMMERCIAL DRIVER INVOLVED – NO APPARENT MEDICAL ISSUES)

16. Tallulah, LA - bus run of the road accident - (MULTIPLE MED ISSUES – INSOMNIA, ETC)

17. Webbers Falls, OK - bridge knocked down by barge - (MARINE ACCIDENT)

18. Santa Monica, CA – car into farmers market accident - (NON-COMMERCIAL DRIVER)

19. Victor, NY – bus run off the road accident - (DIABETES – BUT APPARENTLY UNDER CONTROL)

20. Memphis, TN - 15 passenger daycare van accident - (NOT A CDL DRIVER – SLEEP APNEA)

United States Government Accountability Office

GAO

Testimony

Before the Committee on Transportation and Infrastructure, House of Representatives

For Release on Delivery
Expected at 2:00 p.m. EDT
Thursday, July 24, 2008

COMMERCIAL DRIVERS

Certification Process for Drivers with Serious Medical Conditions

Statement of Gregory D. Kutz, Managing Director
Forensic Audits and Special Investigations

GAO-08-1030T

July 24, 2008

GAO
Accountability·Integrity·Reliability

Highlights

Highlights of GAO-08-1030T, a testimony before the Committee on Transportation and Infrastructure, House of Representatives

COMMERCIAL DRIVERS

Certification Process for Drivers with Serious Medical Conditions

Why GAO Did This Study

Millions of drivers hold commercial driver licenses (CDL), allowing them to operate commercial vehicles. The Department of Transportation (DOT) established regulations requiring medical examiners to certify that these drivers are medically fit to operate their vehicles and provides oversight of their implementation. Little is known on the extent to which individuals with serious medical conditions hold CDLs. Because the effectiveness of the medical certification process is not known, this testimony, and the accompanying report (GAO-08-826) that GAO is releasing today focuses on (1) GAO's analyses of the magnitude of commercial drivers with serious medical conditions, and (2) examples of cases where careful medical examinations did not occur on commercial drivers with serious medical conditions.

To examine the extent individuals holding CDLs have significant disabilities, GAO identified those who were in both DOT's CDL database and selected disability databases of Social Security Administration, Office of Personnel Management, and Departments of Veterans Affairs and Labor and have been identified as 100 percent disabled according to the program's criteria. GAO obtained current CDL data from 12 selected states. To provide case studies, GAO focused on 4 states—Florida, Maryland, Minnesota, and Virginia. For 15 drivers identified from data mining, GAO interviewed, as appropriate, the driver, the driver's employer and the driver's physician.

To view the full product, including the scope and methodology, click on GAO-08-1030T. For more information, contact Greg Kutz at (202)512-6722 or kutzg@gao.gov.

What GAO Found

Commercial drivers with serious medical conditions can still meet DOT medical fitness requirements to safely operate a commercial vehicle and thus hold CDLs. However, there is general agreement that careful medical evaluations are necessary to ensure that serious medical conditions do not preclude the safe operation of a commercial vehicle. Because medical determinations rely in large part on subjective factors that are not captured in databases, it is impossible to determine from data matching and mining alone the extent to which commercial drivers have medical conditions that preclude them from safely driving a commercial vehicle and therefore if the certification process is effective. GAO's analysis provides a starting point for exploring the effectiveness of the current CDL medical certification process.

GAO's analysis of commercial license data from DOT and medical disability data from the Social Security Administration, Office of Personnel Management, and Departments of Veterans Affairs and Labor found that about 563,000 individuals had commercial driver licenses and were determined by the federal government to be eligible for full disability benefits. This represented about 4 percent of all commercial drivers in the DOT database. The 12 selected states we analyzed represent about 135,000 of these commercial drivers. For these 12 selected states, our analysis indicates that about 85 percent of these commercial drivers still have active licenses. The majority of these drivers were issued a CDL after being approved for full federal disability benefits.

GAO's investigations detail examples of 15 cases where careful medical evaluations did not occur on commercial drivers who were receiving full disability benefits for serious medical conditions. The following table details some of the more egregious examples from our investigation.

Examples of Commercial Drivers with Serious Medical Conditions

Type of driver	State	Medical condition
Bus	Florida	Driver receives disability benefits due to breathing insufficiency, for which he uses three daily inhalers. He stated that he "occasionally blacks out and forgets things," but continues to hold a CDL and be hired as a substitute bus driver, despite not having the required medical certificate.
Bus	Minnesota	Driver receives disability benefits due to epilepsy. He also suffers from headaches, sleep apnea, asthma, and high blood pressure. Driver and medical examiner agreed that if the driver felt "loopy" he would not drive a commercial vehicle.
Truck	Florida	Driver receives disability benefits for multiple sclerosis, which causes fatigue. Driver hauls circus equipment to various shows, despite not having the required medical certificate.
Truck	Maryland	Driver receives disability benefits for complete deafness. Medical examiner acknowledged error in certifying medical fitness of driver.

Source: GAO.

Mr. Chairman and Members of the Committee:

Thank you for the opportunity to discuss commercial drivers with serious medical conditions. Millions of American drivers hold a commercial driver license (CDL) that allows them to operate a variety of commercial vehicles such as school buses, cargo vans, and tractor trailers. To help prevent accidents resulting from commercial drivers with medical conditions, federal law requires medical examiners to certify that commercial drivers are medically fit to operate their vehicles. Not all serious medical conditions interfere with the safe operation of a commercial vehicle. In fact, some federal disability programs appropriately try to encourage individuals to work. However, some serious medical conditions can and should disqualify a driver from being medically certified according to Department of Transportation (DOT) regulations.

Because the effectiveness of the current medical certification process is not known, our testimony, and the accompanying report that we are releasing today,[1] provide a starting point for this discussion. Today's testimony focuses on (1) our analyses of the magnitude of commercial drivers with serious medical conditions, and (2) examples of cases where careful medical examinations did not occur on commercial drivers with serious medical conditions.

To examine the extent to which individuals holding CDLs have serious medical conditions, we identified people who were in both DOT's CDL database and selected federal disability databases—Social Security Administration (SSA), Office of Personnel Management (OPM), the Department of Veterans Affairs (VA), and the Department of Labor (DOL)—and have been identified as 100 percent disabled according to the program's criteria. Because DOT's data also include inactive licenses, we obtained current CDL data from 12 selected states (based primarily on the size of CDL population) to identify active CDL license holders who are receiving full federal disability benefits. To provide case study examples we focused on 4 states—Florida, Maryland, Minnesota, and Virginia. For 15 drivers identified from data mining, we interviewed, as appropriate, the driver, driver's employer, and driver's physician. We performed our investigative work from May 2007 to June 2008 in accordance with

[1]GAO, *Commercial Drivers: Certification Process for Drivers with Serious Medical Conditions*, GAO-08-826 (Washington, D.C.: June 30, 2008).

standards prescribed by the President's Council on Integrity and Efficiency.

Summary

Commercial drivers with serious medical conditions, even those determined to be 100 percent disabled, can still meet DOT medical fitness requirements to safely operate a commercial vehicle and thus hold CDLs. As such our analysis provides a starting point for exploring the effectiveness of the current CDL medical certification process. Our analysis of commercial license data from DOT and medical disability data from SSA, VA, OPM, and DOL found that about 563,000 individuals had CDLs and were determined by the federal government to be fully disabled.[2] This represented about 4 percent of all CDLs in the DOT database. Our analysis of persons with CDLs who are receiving full federal disability benefits from 12 selected states (135,000) indicates that most of these commercial drivers still have active licenses. Specifically, about 85 percent (114,000) had a current CDL. A majority of these drivers (85,000) were issued a CDL after being approved for full federal disability benefits.

Our investigations detail 15 cases where careful medical evaluations did not occur on commercial drivers who were fully disabled. Some of the more egregious examples of our investigations include:

- A bus driver in Maryland has been receiving Social Security disability benefits since March 2006 due to his heart condition. In June 2006, approximately 3 months after Social Security determined the driver was fully disabled, the Maryland driver license agency renewed his CDL. The bus driver provided our investigator a forged medical certificate.
- A bus driver in Florida has been receiving Social Security disability benefits since 1994 for breathing deficiencies. The bus driver currently uses three daily inhalers to control his breathing. The bus driver stated that he "occasionally blacks out and forgets things." However, the driver stated that he continues to be hired as a substitute bus driver even though he does not have the required medical certification.

[2]A certain number of commercial drivers may also not be legally entitled to federal disability payments because they do not have a qualifying disability. For example, our review did not make a determination as to whether commercial drivers committed fraud in their application for disability benefits.

Serious Medical Conditions and Commercial Driver Licenses

Commercial drivers with disabilities, even those determined to be 100 percent disabled, can still meet DOT medical fitness requirements for operating a commercial vehicle and thus hold CDLs. Although we fully support individuals with serious medical conditions receiving the training and certifications necessary to safely operate commercial vehicles, there is general agreement that careful medical evaluations are necessary to ensure that serious medical conditions do not preclude the safe operation of a commercial vehicle. Because medical determinations rely in large part on subjective factors that are not captured in databases, it is impossible to determine from data mining and data matching the extent to which disabled commercial drivers have a medical condition that precludes them from safely driving a commercial vehicle and therefore if the certification process is effective. As such our analysis provides a starting point for exploring the effectiveness of the current CDL medical certification process.

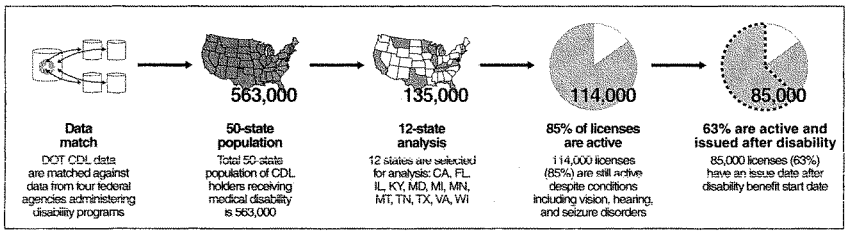
Our analysis of DOT data and disability data from the four selected federal agencies—SSA, VA, OPM, and DOL—found that about 563,000 individuals had been issued CDLs and were receiving full medical disability benefits.[3] This represented about 4 percent of all CDLs in the DOT database.[4]

As shown in figure 1, of the 563,000 CDL holders nationwide who are receiving full federal disability benefits, about 135,000 are from our 12 selected states. About 114,000 of these 135,000 individuals, or about 85 percent, had an active CDL according to data provided by the 12 states. Further, our analysis of the state CDL data indicates that most of the licenses were issued after the commercial driver was found to be eligible for full disability benefits. Specifically, about 85,000 of the 135,000 individuals, or about 63 percent, were issued a CDL after the federal agency determined that they met the federal requirements for full disability benefits.

[3]SSA and VA accounted for 99 percent of the identified drivers.

[4]Because DOT's database includes drivers with suspended, revoked, or lapsed licenses, the actual number of active commercial drivers who receive full federal disability benefits cannot be determined. Also, our analysis does not include drivers with severe medical conditions who are not in the specific disability programs we selected.

Figure 1: CDL Drivers with Full Federal Disabilities for 12 Selected States



Source: GAO (data), Art Explosion (graphics)

Because much of the determination of the medical fitness of commercial drivers relies on subjective factors, and because there are ways to circumvent the process (as discussed below), it is impossible to determine the extent to which these commercial drivers have a medical condition that would preclude them from safely driving a commercial vehicle.[5] However, because these individuals are receiving full disability benefits, it is likely that these medical conditions are severe. Further analysis showed that over 1,000 of these drivers are diagnosed with vision, hearing, or seizure disorders, which are medical conditions that would routinely deny the granting of a CDL.[6]

Examples of Commercial Drivers with Serious Medical Impairments

Our investigations detail 15 cases where careful medical evaluations did not occur on commercial drivers who were receiving full medical disability benefits. In all 15 cases, we found that the states renewed the drivers' CDLs after the drivers were found by the federal government to be eligible for full disability benefits. We referred all 15 cases to their respective state driver license agencies for further investigation. In table 1, we summarize 5 of the more egregious cases.

[5]Federal disability programs such as SSA's "Ticket to Work" allow certain fully disabled recipients to work and still receive disability benefits.

[6]49 C.F.R. §391.41(b).

Table 1: Summary Information on Five Commercial Drivers with Active Licenses despite Serious Medical Conditions

Case	State	Details
1	Maryland	• Bus driver has received Social Security disability benefits since March 2006 due to an aneurysm of the aorta and valvular heart disease. • Three months after disability determination, the state renewed bus driver's CDL for 5 years. • The bus driver provided our investigator a forged medical certificate without the required medical license number. Medical examiner denied conducting CDL medical exam or signing the medical certificate.
2	Florida	• Bus driver has received Social Security disability benefits since 1994 for chronic obstructive pulmonary disorder (COPD).[a] • Bus driver currently uses three daily inhalers to control breathing, and stated that he "occasionally blacks out and forgets things." • Driver continues to be hired as a substitute bus driver, despite not having a medical certificate. • Bus driver's CDL expires in 2010.
3	Minnesota	• Bus driver has received Social Security disability benefits since 2004 for epilepsy, among other medical conditions. • Medical examiner certified the driver in 2007 despite previously prescribing him daily antiseizure medication. DOT guidance states that this disqualifies the driver. • The driver and medical examiner agreed that if the driver felt "loopy" he would not drive a commercial vehicle. • Driver stated that he also suffers from headaches, sleep apnea, asthma, and high blood pressure. • The state driver license agency renewed the CDL for 4 years in 2007.
4	Florida	• Truck driver has received Veteran Affairs disability benefits since 1990 for multiple sclerosis. • Driver stated that the medical condition causes fatigue. • Driver stated he received his last medical certificate in the late 1990s. • The driver's relative occasionally employs the driver to haul circus equipment to various shows, despite not having a current medical certificate. • The state driver license agency renewed the CDL for about 4 years in 2007.
5	Maryland	• Truck driver has received Social Security disability benefits since 2001 due to complete deafness. • Truck driver operates a dump truck as part of an excavating business. • Medical examiner admitted error in certifying medical fitness of driver. • The state driver license agency last renewed the CDL in 2006.

Source: GAO

[a]Chronic obstructive pulmonary disease (COPD) is a term referring to two lung diseases, chronic bronchitis and emphysema.

The above cases illustrate instances where careful medical examinations did not occur. Based on our investigations, we found:

- Most states do not require commercial drivers to provide medical certifications to be issued a CDL. Instead, many states only require individuals to self-certify that a medical examiner granted them a medical

certification allowing them to operate commercial vehicles, thus meeting the minimum federal requirements.[7] As a result, we found several commercial drivers who made false assertions on their self-certification that they received a medical certification when in fact no certification was made.

- Commercial drivers produced fraudulent documentation regarding their medical certification. Specifically, we found instances where commercial drivers forged a medical examiner's signature on a medical certification form. In addition, we also found a driver who failed to disclose to the medical examiner that another doctor had prescribed him morphine for his back pain.

- Certain medical examiners did not follow the federal requirements in the determination of medical fitness of commercial drivers. For example, one medical examiner told GAO that she did not know that a driver's deafness disqualifies the driver from receiving a medical certification.

Mr. Chairman and Members of the Committee, this concludes my statement. I would be pleased to answer any questions that you or other members of the committee may have at this time.

Contacts and Staff Acknowledgments

For further information about this testimony, please contact Gregory D. Kutz at (202) 512-6722 or kutzg@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this testimony. GAO staff who made major contributions to this report include Matthew Harris, Assistant Director; Andrew O'Connell, Assistant

[7]DOT is finalizing a proposed rule to merge information from the medical examiner's certificate into the commercial driver license process as required by the Motor Carrier Safety Improvement Act of 1999. The new rule would require drivers to provide a copy of their current medical examiner's certificate to their state driver license agency. This new rule would make the state driver license agencies responsible for ensuring that holders of commercial driver licenses have current medical certificates.

Director; Matthew Valenta, Assistant Director; Gary Bianchi; Sunny Chang; Paul DeSaulniers; Eric Eskew; Craig Fischer; John Kelly; Jeffrey McDermott; Andrew McIntosh; Philip Reiff; Ray Rodriguez; Daniel Silva; Nathaniel Taylor; and Lindsay Welter.

This is a work of the U.S. government and is not subject to copyright protection in the United States. It may be reproduced and distributed in its entirety without further permission from GAO. However, because this work may contain copyrighted images or other material, permission from the copyright holder may be necessary if you wish to reproduce this material separately.

GAO's Mission

The Government Accountability Office, the audit, evaluation, and investigative arm of Congress, exists to support Congress in meeting its constitutional responsibilities and to help improve the performance and accountability of the federal government for the American people. GAO examines the use of public funds; evaluates federal programs and policies; and provides analyses, recommendations, and other assistance to help Congress make informed oversight, policy, and funding decisions. GAO's commitment to good government is reflected in its core values of accountability, integrity, and reliability.

Obtaining Copies of GAO Reports and Testimony

The fastest and easiest way to obtain copies of GAO documents at no cost is through GAO's Web site (www.gao.gov). Each weekday, GAO posts newly released reports, testimony, and correspondence on its Web site. To have GAO e-mail you a list of newly posted products every afternoon, go to www.gao.gov and select "E-mail Updates."

Order by Mail or Phone

The first copy of each printed report is free. Additional copies are $2 each. A check or money order should be made out to the Superintendent of Documents. GAO also accepts VISA and Mastercard. Orders for 100 or more copies mailed to a single address are discounted 25 percent. Orders should be sent to:

U.S. Government Accountability Office
441 G Street NW, Room LM
Washington, DC 20548

To order by Phone: Voice: (202) 512-6000
TDD: (202) 512-2537
Fax: (202) 512-6061

To Report Fraud, Waste, and Abuse in Federal Programs

Contact:

Web site: www.gao.gov/fraudnet/fraudnet.htm
E-mail: fraudnet@gao.gov
Automated answering system: (800) 424-5454 or (202) 512-7470

Congressional Relations

Ralph Dawn, Managing Director, dawnr@gao.gov, (202) 512-4400
U.S. Government Accountability Office, 441 G Street NW, Room 7125
Washington, DC 20548

Public Affairs

Chuck Young, Managing Director, youngc1@gao.gov, (202) 512-4800
U.S. Government Accountability Office, 441 G Street NW, Room 7149
Washington, DC 20548

PRINTED ON RECYCLED PAPER

United States Government Accountability Office
Washington, DC 20548

August 29, 2008

The Honorable James L. Oberstar
Chairman
Committee on Transportation and Infrastructure
United States House of Representatives

Subject: *Commercial Drivers: Posthearing Responses on July 24, 2008, Hearing on FMCSA's Progress in Improving Medical Oversight of Commercial Drivers*

This letter responds to your request for additional information related to the Committee's July 24, 2008, hearing entitled *FMCSA's Progress in Improving Medical Oversight of Commercial Drivers.* Enclosed are our responses to the supplemental questions you submitted for the record. Our responses are based largely on information contained in our published report and related testimony on medical certification of commercial drivers and reflect our views based on that information. Because the responses are based on prior work, we did not obtain comments from the Department of Transportation.

If you have any further questions or would like to discuss these responses, please contact me at (202) 512-6722 or kutzg@gao.gov.

Sincerely yours,

Gregory D. Kutz
Managing Director
Forensic Audits and Special Investigations

Enclosure -1

Enclosure

Responses to Supplemental Questions for the Record
Submitted by the Honorable James L. Oberstar
Committee on Transportation and Infrastructure's
Hearing on
FMCSA's Progress in Improving Medical Oversight of Commercial Drivers
July 24, 2008

1. **Do you believe the NPRM that will require State licensing agencies to collect the medical cards and enter the data into the state licensing data will prevent fraud?**

Answer:

DOT is finalizing a proposed rule to merge information from the medical examiner's certificate into the commercial driver license process as required by the Motor Carrier Safety Improvement Act of 1999. The proposed rule would require drivers to provide a copy of their current medical examiner's certificate to their state driver license agency. The proposed rule would make the state driver license agencies responsible for ensuring that holders of commercial driver licenses have current medical certificates. The proposed rule is a significant improvement over the self-certification requirement because commercial drivers will be required to provide medical examination certificates to the state driver license agency, and this step will make it harder to commit fraud. However, our case studies found examples of commercial drivers who forged the medical examiner's signature on the medical certificates in order to get their commercial drivers license. Without a systematic process allowing state driver license agencies to verify medical certifications with the medical examiner, commercial drivers will be able to submit forged medical certificates without detection.

2. **Are there any incentives currently for a driver with a medical disability to try to obtain a medical card?**

Answer:
The scope of our investigations did not include identification of any incentives for a driver with a medical disability to try to obtain a medical card.

3. **Do medical examiners ask commercial drivers whether they are receiving any disability payments for medical conditions? Should they?**

Answer:
We are not aware of any requirements for medical examiners to ask commercial drivers whether they are receiving any disability payments for medical conditions. The driver completes and certifies a medical certification form that includes information about the driver's health history. The form is provided to the medical examiner as part of the examination. The medical examiner discusses the driver's health history and the side effects of prescribed medication and common over-the-counter medications. If the commercial driver has a severe medical condition requiring full federal disability benefits, theoretically the medical examiner should ask or the commercial driver should disclose the medical condition as part of the medical certification form or as part of the medical examination.

4. **You found 563,000 drivers in FMCSA's database that were receiving full medical disability benefits. Were all of these really disabled people or were there any cases of Social Security fraud?**

Answer:
We did not investigate Social Security fraud because it was outside the scope of our review.

Enclosure

5. **How were the individuals you looked at able to hide their wages from social security? Presumably SSA would cut off their benefits if they knew they were working.**

Answer:
We did not investigate whether individuals were able to hide their wages from Social Security because it was outside the scope of our review.

6. **Was there any other fraud that you found?**

Answer:
Our investigations found instances where commercial drivers forged medical certificates and where commercial drivers made false assertions on their self-certification that they received a medical certification when in fact no certification was made.

7. **What recommendations would you make to FMCSA to make sure medical examiners are cognizant of the requirements regarding certain medical conditions?**

Answer:
In our report and related testimony, we did not make any recommendations to FMCSA.

Enclosure

8. **Your analysis looked at drivers receiving federal medical disability payments. Did you look at State disability programs? Do you think the problems you found with this population also exist in the drivers who aren't receiving disability benefits?**

Answer:
We did not include state disability programs as part of our investigation. Our analysis did not include drivers with severe medical conditions that are not included in the specific federal disability programs we selected.

9. **Did you find any evidence of "doctor shopping" whereby the drivers went from examiner to examiner until finding one who could certify them? How did that work?**

Answer:
Our investigation of the 15 cases did not identify specific examples of "doctor shopping." However, we did identify one driver who failed to disclose to the medical examiner that another doctor had prescribed him morphine for back pain.

Enclosure

Responses to Supplemental Questions for the Record
Submitted by the Honorable John J. Duncan, Jr.
Committee on Transportation and Infrastructure's
Hearing on
FMCSA's Progress in Improving Medical Oversight of Commercial Drivers
July 24, 2008

1. **Do you believe that FMCSA's proposed rules will address most of the problems found with the medical certificates, or lack thereof, of the drivers in your study?**

Answer:

DOT is finalizing a proposed rule to merge information from the medical examiner's certificate into the commercial driver license process as required by the Motor Carrier Safety Improvement Act of 1999. The proposed rule would require drivers to provide a copy of their current medical examiner's certificate to their state driver license agency. The proposed rule would make the state driver license agencies responsible for ensuring that holders of commercial driver licenses have current medical certificates. The proposed rule is a significant improvement over the self-certification requirement because commercial drivers will be required to provide medical examination certificates to the state driver license agency, and this step will make it harder to commit fraud. However, our case studies found examples of commercial drivers who forged the medical examiner's signature on the medical certificates in order to get their commercial drivers license. Without a systematic process allowing state driver license agencies to verify medical certifications with the medical examiner, commercial drivers will be able to submit forged medical certificates without detection.

Enclosure

2. **Did the methodology used for the investigation and report allow you to determine the number of CDL holders who should not be driving because of a disqualifying medical condition?**

Answer:
It is impossible to determine from data analysis which commercial drivers receiving disability benefits have a medical condition that precludes them from safely driving a commercial vehicle because medical determinations are largely based on subjective factors that are not captured in databases. As such our analysis provides a starting point for exploring the effectiveness of the current CDL medical certification process.

3. **Your report states that you could not determine the effectiveness of the current medical certification process? If that's the case, then wouldn't major regulatory and program changes by FMCSA be hard to justify? If you cannot quantify the problem, how do you quantify and justify any solutions?**

Answer:
Our report stated that it is impossible to determine from data analysis which commercial drivers receiving disability benefits have a medical condition that precludes them from safely driving a commercial vehicle because medical determinations are largely based on subjective factors that are not captured in databases. However, our investigations did demonstrate instances in which the current regulatory framework failed to prevent drivers with clearly disqualifying medical conditions from obtaining a CDL. The purpose of the analysis was to provide a starting point for exploring the effectiveness of the current CDL medical certification process. Our report did not make any conclusions or any recommendations to FMCSA.

Enclosure

4. **According to the latest FMCSA report on its Large Truck Crash Causation Study from January of this year, medical issues (including drivers who were actually asleep at the wheel) where only responsible for 3% of the crashes caused by the CMV driver. Could you explain the discrepancy between the 12% figure stated in the GAO report and the FMCSA's latest figure?**

Answer:

DOT reported that about 12 percent of the crashes where the crash's cause could be identified were because of drivers falling asleep, being disabled by a heart attack or seizure, or other physical impairments.[1] We provided a draft of our report to DOT for review and comment. In response to the report, DOT did not dispute the 12 percent figure..

5. **Three of the drivers in your report are recorded as driving a dump truck. Do you know if these drivers ever crossed state lines? Were any of the other drivers in your study engaged only in intrastate driving operations? Was an attempt made to determine how many of the CDL holders are engaged only in intrastate operations?**

Answer:

Our investigation did not determine the extent to which commercial drivers, including the 15 drivers in our case studies, engaged only in intrastate driving operations. All 15 drivers in our case studies had commercial driver licenses that authorized interstate driving. Further, our analysis of restriction codes for 10 selected states found that only about 1 percent of the commercial drivers were

[1]DOT, Federal Motor Carrier Safety Administration, Large Truck Crash Causation Study, Publication No.: FMCSA-RRA-07-017 (July 2007).

restricted to intrastate driving. Moreover, most states have adopted the federal medical requirements for their intrastate commercial drivers.

6. **The CDL program is a federal mandate to the states. Are all drivers who posses a CDL required to have a valid medical certificate?**

Answer:
Federal regulations apply specifically to interstate drivers. However, most states have adopted the federal medical requirements for their intrastate commercial drivers.

7. **Was any attempt made to ascertain how many CDL holders that are receiving federal disability payments are no longer actively driving?**

Answer:
For the 12 selected states, we found that approximately 114,000 commercial drivers had an active commercial drivers' license while also receiving full federal disability payments. Further, approximately 85,000, or about 63 percent of the active commercial drivers from the 12 selected states, were issued a CDL after the driver was approved for full federal benefits. It is impossible to determine from data analysis which commercial drivers receiving disability benefits are no longer actively driving.

June 2008

GAO
Accountability Integrity Reliability
Highlights

Highlights of GAO-08-826, a report to congressional requesters

COMMERCIAL DRIVERS

Certification Process for Drivers with Serious Medical Conditions

Why GAO Did This Study

Millions of drivers hold commercial driver licenses (CDL), allowing them to operate commercial vehicles. The Department of Transportation (DOT) established regulations requiring medical examiners to certify that these drivers are medically fit to operate their vehicles and provides oversight of their implementation. Little is known on the extent to which individuals with serious medical conditions hold CDLs. GAO was asked to (1) examine the extent to which individuals holding a current CDL have serious medical conditions and (2) provide examples of commercial drivers with medical conditions that should disqualify them from receiving a CDL.

To examine the extent to which individuals holding CDLs have serious medical conditions, GAO identified those who were in both DOT's CDL database and selected federal disability databases of the Social Security Administration, Office of Personnel Management, and Departments of Veterans Affairs and Labor and have been identified as 100 percent disabled according to the program's criteria. Because DOT's data also include inactive licenses, GAO obtained current CDL data from 12 selected states based primarily on the size of CDL population. To provide case study examples, GAO focused on four states—Florida, Maryland, Minnesota, and Virginia. For 15 drivers identified from data mining, GAO interviewed, as appropriate, the driver, driver's employer, and driver's physician. GAO is not making any recommendations.

To view the full product, including the scope and methodology, click on GAO-08-826. For more information, contact Greg Kutz at (202) 512-6722 or kutzg@gao.gov.

What GAO Found

Commercial drivers with serious medical conditions can still meet DOT medical fitness requirements to safely operate a commercial vehicle and thus hold CDLs. However, there is general agreement that careful medical evaluations are necessary to ensure that serious medical conditions do not preclude the safe operation of a commercial vehicle. Because medical determinations rely in large part on subjective factors that are not captured in databases, it is impossible to determine from data matching and mining alone the extent to which commercial drivers have medical conditions that preclude them from safely driving a commercial vehicle and therefore if the certification process is effective. GAO's analysis provides a starting point for exploring the effectiveness of the current CDL medical certification process.

Our analysis of commercial license data from DOT and medical disability data from the Social Security Administration, Office of Personnel Management, and Departments of Veterans Affairs and Labor found that about 563,000 of such individuals had commercial driver licenses and were determined by the federal government to be eligible for full disability benefits. This represented over 4 percent of all commercial driver licenses in the DOT database. Our analysis of 12 selected states indicates that most of these commercial drivers still have active licenses. Specifically, for these 12 selected states, about 85 percent had a current CDL even though they had a medical condition from which they received full federal disability benefits. The majority of these drivers were issued a CDL after the driver was approved for full federal disability benefit.

Our investigations detail examples of 15 cases where careful medical evaluations did not occur on commercial drivers who were receiving full disability benefits for serious medical conditions. The following table details some of the more egregious examples from our investigation.

Examples of Commercial Drivers with Serious Medical Conditions

Type of driver	State	Medical condition
Bus	Florida	Driver receives disability benefits due to breathing insufficiency, for which he uses three daily inhalers. He stated that he "occasionally blacks out and forgets things," but continues to hold a CDL and be hired as a substitute bus driver, despite not having the required medical certificate.
Bus	Minnesota	Driver receives disability benefits due to epilepsy. He also suffers from headaches, sleep apnea, asthma, and high blood pressure. Driver and medical examiner agreed that if the driver felt "loopy" he would not drive a commercial vehicle.
Truck	Florida	Driver receives disability benefits for multiple sclerosis, which causes fatigue. Driver hauls circus equipment to various shows, despite not having the required medical certificate.
Truck	Maryland	Driver receives disability benefits for complete deafness. Medical examiner acknowledged error in certifying medical fitness of driver.

Source: GAO.

STATEMENT OF
ROSE A. McMURRAY, ASSISTANT ADMINISTRATOR
AND CHIEF SAFETY OFFICER
FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION

BEFORE THE HOUSE COMMITTEE
ON TRANSPORTATION AND INFRASTRUCTURE
July 24, 2008

Chairman Oberstar, Ranking Member Mica, and Members of the Committee, thank you for inviting me today to discuss the Federal Motor Carrier Safety Administration's (FMCSA's) medical program and to highlight our Agency's progress toward improving oversight of the process for certifying the physical qualifications of a driver of a commercial motor vehicle (CMV). FMCSA is pursuing program initiatives and exploring rules to support the medical program in preparation for implementation of new initiatives, such as the National Registry of Certified Medical Examiners and regulations to provide for a Federal medical qualification certificate to be made part of the Commercial Driver's License (CDL). These initiatives include engaging the diverse medical community that examines drivers for medical fitness for duty, and in carrying out the planning, development, and research necessary to promulgate and enforce these proposed rules and programs.

The FMCSA sought and received expanded authorities to support its medical program. This expansion was provided by section 4116 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users, Pub. L. 109-59, 119 Stat. 1726 (Aug. 10, 2005) (SAFETEA-LU). SAFETEA-LU strengthened FMCSA's ability to regulate the medical examiners that conduct more than 3 million driver physical qualification examinations each year and addressed some of the challenges the Agency faces in creating a comprehensive system of medical standards where none existed previously.

The FMCSA is responsible for regulating more than 6 million CMV drivers who undergo medical examinations at least every two years. Given the size of this commercial driver population, the system created to examine drivers for medical fitness for duty will require the registration of thousands of certified medical examiners to carry out the program. Mr. Chairman, FMCSA appreciates your support of our strategy to build a strong foundation for FMCSA's medical program.

Comprehensive Medical Program

The FMCSA's medical program promotes the safety of America's roadways through the development and implementation of medical qualification standards that ensure interstate truck and bus drivers are qualified physically to operate their vehicles safely. FMCSA's program seeks to accomplish the following goals:

- Develop evidence-based medical standards supported by research and science;

- Ensure effective medical standards that minimize the need for exemptions and waivers;
- Implement programs linked to safety improvements; and
- Enforce medical regulations against non-complying motor carriers and medical practitioners.

Four years ago, FMCSA refocused its medical program to enhance oversight of the medical certification process for truck and bus drivers. The Agency supplemented Federal personnel with several expert clinical consultants, including two prominent physicians who are national experts in occupational medicine and who have substantial expertise in transportation medical standards. In addition, recognizing the importance that leadership of the medical program has on strengthening this area, the Agency upgraded the position of Director of Medical Programs to a Senior Executive Schedule position. FMCSA evaluated existing programs and projects and made program improvements with new performance-based goals and objectives to sustain the medical program's new direction.

Significant Progress Has Been Made

Mr. Chairman, FMCSA maintains a rigorous enforcement program that, in conjunction with State and local partners, is supported by conducting compliance reviews (CRs) and roadside inspections. These inspections and CRs provide important information on driver compliance with the Federal Motor Carrier Safety Regulations and FMCSA's medical program. The Agency uses the results of these activities to identify opportunities to provide oversight of the medical certification process for commercial drivers, including information regarding the extent of missing or invalid medical certificates. For instance, in 2007, FMCSA and its State partners conducted more than 3 million roadside inspections and more than 16,000 CRs. As a result of the roadside inspections, more than 145,000 citations were issued to drivers who did not possess their medical certificates and more than 42,000 citations to drivers with expired medical certificates. Among the 16,000 CRs FMCSA conducted, 43 acute violations were identified where carriers used physically unqualified drivers and 181 critical violations identified where carriers did not have medical certificates on file.

In 2004, when the FMCSA began revitalizing the medical program, the Agency focused its efforts on linking regulations, policies, and programs to safety on America's roadways. There was no coherent program infrastructure in place and no roster of medical professionals who performed driver physical qualification examinations. With a regulated population of more than 6 million interstate drivers, of which approximately 3.1 million are interstate CDL holders, FMCSA has worked hard to engage drivers, trucking and bus companies, and the medical community in setting a new direction for the FMCSA medical program. At this time, I would like to describe some of the steps FMCSA has taken to strengthen its medical oversight.

New Initiatives

Two new initiatives form the cornerstone of FMCSA's medical program redevelopment, the proposed merger of the Medical Certification and CDL processes, and creation of a National Registry. Currently, these two initiatives are under Departmental development and review.

Medical Certification and the CDL

First, the proposal to merge the medical certification process and the CDL issuance and renewal process would improve FMCSA's and the States' ability to monitor the medical certification status of interstate drivers. This is important because, in the past, most States had paper-based systems and allowed drivers to "self-certify" as to whether they possessed a valid medical certificate. Among the provisions published in the November 2006 Notice of Proposed Rulemaking (NPRM) and now under consideration is the requirement that CDL holders provide a copy of their medical certificate to the State Driver Licensing Agency in order to be granted a CDL or to maintain their existing interstate driving privileges. States would then add the medical certification information to the driver's record. Were a driver to fail to renew his medical certificate, or if the driver were to fail the physical examination, the CDL would be downgraded automatically to prohibit operation in interstate commerce.

As part of this rulemaking, States would be required to make the medical certification status available electronically to motor carrier safety enforcement personnel, motor carriers, and drivers. FMCSA and the States would be able to monitor whether a driver is medically certified, meaning that interstate CDL drivers would no longer be required to carry the medical certificate (also known as a medical card). Non-compliance with the medical requirements would be verifiable at the roadside by enforcement officers querying the driver license system – something they cannot now accomplish.

FMCSA has worked with its CDL Task Force, an advisory committee authorized by SAFETEA-LU, and other key stakeholders on an approach that would help to remove medically unqualified drivers or drivers who have expired certifications from America's roads. Improving the CDL system to require medical certificate information on the driver's record would prevent fraud that occurs with the paper-based system and strengthen the foundation for monitoring individual driver medical certification status.

National Registry

Second, FMCSA has the process underway to establish a national registry of certified medical examiners. This would accomplish the following: 1)establish national training, testing, and certification standards for medical examiners who conduct physical examinations and certify that interstate truck and bus drivers meet the Federal medical qualification standards; 2) establish a database (or National Registry) of certified and qualified medical examiners for use by motor carriers, drivers, and Federal and State enforcement personnel; and 3) require medical examiners to transmit certain information

electronically to FMCSA. The goal would be to ensure that medical examiners undergo an accredited, standardized training and testing program and to ensure that driver physical examinations are conducted in a more consistent manner, enabling greater monitoring of medical examiner performance.

Together, these two initiatives would strengthen medical certification and the driver medical examination process. Additionally, FMCSA is incorporating implementation plans for these proposed rules within Agency initiatives, including the CDL Information System modernization and the Comprehensive Safety Analysis 2010 programs. Through these combined efforts, FMCSA will improve the Agency's ability to monitor driver safety, which includes the capacity to monitor the medical examiners that perform the physical qualification examinations.

Strengthening Federal Medical Standards for CMV Drivers

In 2005, FMCSA established the Department of Transportation's first Medical Review Board (MRB), an advisory committee subject to the Federal Advisory Committee Act and authorized specifically by SAFETEA-LU. The MRB's role is to provide advice to the Agency about the medical adequacy of existing standards. From a pool of nearly 100 interested physicians who volunteered for MRB service, the Agency selected five highly qualified physicians from across the United States, representing different medical specialties from across the United States. To date, FMCSA's MRB has held eight public meetings, including one held last week on July 18. These physicians have provided valuable insight on how to improve CMV driver medical standards and have made more than 40 science-based recommendations that FMCSA is considering to develop proposed changes to the medical regulations.

The Agency's new science-based model for analyzing risk of driving with a particular disease or injury is an important aspect of FMCSA's work to strengthen driver medical standards. FMCSA is using a systematic review model, where independent research studies are combined and analyzed to understand the relationship between driving with a medical condition and truck and bus crashes. This evidence-based medicine approach is used by the U. S. Department of Health and Human Services to set policy for the efficacy of medications. Modern medicine relies on the work of "evidence-based practice centers" to establish standards to guide clinical practice. The use of research from these same centers will help ensure FMCSA medical standards are based upon the best available information currently used by healthcare practitioners.

In examining its regulated driver population, FMCSA applies the evidence to analyze how disease and injury or symptoms from medical conditions, such as drowsiness or dizziness, are more likely to result in a large truck or bus crash. Once a study is completed, FMCSA holds a proceeding with physicians and scientific experts to conduct a peer review of this evidence. The evidence report and expert panel recommendations are then reviewed by the MRB. To date, FMCSA has completed 12 evidence reports on a wide range of topics, from medications and diabetes mellitus to vision and cardiovascular disease. FMCSA values the commitment of its MRB and the many physicians and scientists who have

participated in our initiatives to strengthen the commercial driver medical regulatory program. The Agency is now considering proposed changes to the driver physical qualification requirements to ensure that evidence-based standards are used to determine medical fitness for duty.

Engaging New Partners in CMV Safety

Mr. Chairman, in recent years, the FMCSA has made great efforts to engage and strengthen its partnership with the medical community and organizations that share its interest in CMV driver health and safety. FMCSA knows this to be an area where the cause and effect are often elusive. Crashes are usually the result of multiple events leading up to an incident. Braking, speed, and aggressive driving can be established but the effect of a person's physical condition is extremely hard to establish as a direct causal factor for a crash, with the exception of several obvious causes, such as a cardiac event that can be verified by an autopsy.

In 2006, FMCSA began holding public forums to discuss its medical program, including meetings to gather the public and medical community perspectives on the proposed National Registry program. FMCSA's MRB meetings serve as a national forum where drivers, motor carriers, and medical practitioners can discuss proposed changes to medical rules and policies.

Since 2006, FMCSA has convened multidisciplinary work groups to discuss improvements to the driver medical certification process. Current regulations allow driver medical examinations to be conducted by medical doctors, doctors of osteopathy, physician assistants, advanced nurse practitioners, chiropractors, and any other medical professional licensed or certified by individual State laws to perform occupation-specific physical examinations in accordance with the Agency's protocols. Through these forums and FMCSA's outreach efforts, the Agency has developed a national list serve of nearly 6,000 medical examiners and safety organizations with representation from all 50 States and the District of Columbia to communicate directly with the medical examiner community.

The FMCSA established a new partnership with the American College of Occupational and Environmental Medicine (ACOEM), the preeminent medical association that champions occupational health and safety in the United States. Through the ACOEM, the Agency sponsors a physician fellow who works with FMCSA on driver medical standards and research in support the medical program.

Additionally, the FMCSA has taken a leadership role that demonstrates its strong commitment to the commercial driver medical program. In 2006 the Agency began the Federal Transportation Medical Roundtable, which provides a Federal forum for discussion about medical standards and their relationship to workers, especially transportation workers. The Roundtable brings together all of the U.S. Department of Transportation's operating administrations and other Federal agencies with transportation safety responsibilities, such as the U. S. Department of Labor's Occupational Health and Safety Administration, the U. S. Coast Guard, and the U. S. Postal Service. This informal

working group shares new and relevant information about work in progress on driver and other transportation medical issues.

The FMCSA is conducting a comprehensive, science-based approach to improving its medical program, while engaging the public and key stakeholders in this critical aspect of the Agency's safety program.

Other Initiatives to Support FMCSA's Medical Program

The Agency is considering several additional important initiatives to support its medical regulatory program. FMCSA has conducted an outreach and education program for its field and State personnel to enhance their understanding of the driver medical requirements. In addition to new Web-based education materials, FMCSA conducts Webinars on topics such as the driver medical examination and how medications may impact driving. These educational activities provide new tools for both Federal and State field personnel to use when enforcing FMCSA's medical regulations, as well as valuable insight into what problems investigators and inspectors encounter during compliance reviews and at the roadside during inspections.

FMCSA will release soon the first few chapters of an on-line medical examiner handbook, the on-line education resource for practitioners who conduct driver examinations. The Agency has worked closely with many expert medical consultants including the MRB and medical expert panelists, as well as the ongoing multidisciplinary working groups, to develop this handbook that will provide core curriculum materials for medical examiners. While this information will change as medical regulations evolve, FMCSA decided to begin this process of improving the quality of information available to medical examiners prior to its publication of the forthcoming National Registry rulemaking.

FMCSA completed the first formal job analysis, a study that supports the launch of a new accredited training program, of the various healthcare professionals who perform CMV driver medical examinations in 2007. This Role Delineation Study defines the essential elements of the physical examination and examines scientifically the relevance of each task. This type of study is conducted independently as one requirement for national program accreditation and is typically conducted every five years. As a result of the Role Delineation Study, FMCSA and the public will benefit from an evaluation of the physical qualification requirements and an improved understanding of who performs these examinations. The majority of the more than four thousand study participants provided demographic data about the medical examiner community, with nearly equal representation among urban, suburban, and rural communities.

In addition to the Role Delineation Study, FMCSA is conducting a focused survey to analyze medical examiner performance with a sub-analysis of direct observations of the examiners at work. The Agency expects to answer some important questions, such as how medical examiners are performing in the field, whether there exist any differences between methods and outcomes by medical discipline, and how to define the role of the medical

examiner delegate (e.g., medical or nursing assistant). These data will provide insight into the medical examiner decision-making process.

Currently, more than 100 medical examiners are taking a trial certification test. This is a program accreditation requirement for which FMCSA has developed a core curriculum question test bank of 450 questions. FMCSA will analyze passing scores and differences among practitioners as it develops a standardized national medical examiner test.

Coupled with the development of the informational technology system business requirements that accompany the proposed changes in the medical regulatory program, these studies ensure that FMCSA can implement important new programs such as the National Registry effectively and efficiently.

Conclusion

Mr. Chairman, given the aging American workforce, the driver medical certification process will increase in complexity in the coming years. FMCSA is committed to establishing and maintaining prudent and effective medical standards based on the best available scientific evidence. This includes diagnoses and advances in treatment. The Agency works to ensure that its standards prohibit drivers from operating trucks and buses in interstate commerce if the drivers have medical conditions that would likely compromise their ability to operate safely. In the end, FMCSA seeks to establish sound medical regulations that balance the desire for drivers to work in commercial operations while ensuring the traveling public is not placed at risk. As priorities change and our Nation's transportation needs evolve, safety on our roads must remain paramount to all priorities. Road safety is, and will continue to be, FMCSA's chief priority.

Thank you for the opportunity to speak to you today about this important issue. I would be happy to respond to any questions you may have.

COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE
HEARING ON "FMCSA'S PROGRESS IN IMPROVING MEDICAL OVERSIGHT OF COMMERCIAL DRIVERS"
JULY 24, 2008
QUESTIONS FOR THE HEARING RECORD

QUESTIONS FROM THE HONORABLE JAMES L. OBERSTAR

Question 1: Your website lists 'failure to have a medical card' as the 6th most common violation found during inspections. Six percent of drivers you inspect are found to not have a medical card. What is FMCSA doing to reduce this number?

Answer 1: FMCSA and our State partners regularly check during compliance reviews, new entrant safety audits, and roadside inspections to ensure drivers have a valid medical card. When it is discovered that a driver does not have a medical card or a company is employing drivers without valid medical cards, the driver and carrier can be subjected to enforcement action, generally in the form of civil penalties.

The proposed rule to merge the medical certification process and the Commercial Driver's License (CDL) issuance and renewal process would improve the Federal Motor Carrier Safety Administration's (FMCSA's) and the States' ability to monitor the medical certification status of interstate drivers. Among the provisions included in the November 2006 Notice of Proposed Rulemaking (NPRM) is the proposal that CDL holders be required to provide a copy of their medical certificate to the State Driver Licensing Agency (SDLA) in order to be granted a CDL or to maintain their existing interstate driving privileges. States would then add the medical certification information to the driver's electronic record. Under the proposal, if a driver fails to renew the medical certificate, or if the driver fails the physical examination, the CDL would be downgraded automatically to prohibit the operation of commercial motor vehicles (CMVs) in interstate commerce. As part of this proposed rulemaking, States would be required to make the CDL driver's medical certification status available electronically to motor carrier safety enforcement personnel, motor carriers, and drivers. FMCSA and State enforcement personnel would then be able to determine during a roadside inspection whether a driver is medically certified. Federal, State, and local government enforcement officials would query the Commercial Driver's License Information System (CDLIS) or the National Law Enforcement Telecommunication System (NLETS) to determine whether the driver had the required medical certification – something they cannot now accomplish.

Question 2: What is the penalty for not having a valid medical card? Is it an out-of-service offense? Penalty? If so, how much?

Answer 2: Failing to have a medical card is a recordkeeping violation of the Federal Motor Carrier Safety Regulations (FMCSRs). The maximum penalty is $550.00 per day/trip. Failing to have a medical certificate in one's possession is not a driver out-of-

service violation in the North American Standard Out-of-Service Criteria used by Federal, State, and Provincial roadside inspectors in the U.S. and Canada. This is because not having the card does not prove the driver is not medically certified. However, if an inspector or investigator has knowledge and/or evidence that the driver is not medically qualified, or does not possess a valid medical certificate and is not in possession of any required exemption (vision or diabetes) or Skills Performance Evaluation (SPE) Certificate, the driver would then be placed out of service.

Question 3: How can an inspector currently tell if a medical card is authentic?

Answer 3: Typically, an inspector or investigator examines a document first for obvious signs of alteration. The most commonly reported indicators of fraud on a driver medical certificate include obvious marks and changes on the certificate and the use of correction fluid (e.g., on expiration date), expiration dates longer than the maximum two-year period, and the use of improper medical practitioner credentials.

Question 4: How often do inspectors call the medical examiners and try to verify the information on the card?

Answer 4: The FMCSA does not collect data on the frequency with which roadside inspectors call medical examiners to verify the information on the card. Generally, unless there is some indication that the driver may be incapable of continuing to operate the commercial vehicle safely (e.g., the driver appears to have difficulty moving one of his arms or the inspector observes medicines or medical equipment that suggests a medical condition) or something about the medical certificate appeared unusual (such as the handwriting on the medical card appeared to be same as the handwriting in the log book), the inspector would accept the medical card as valid.

Question 5: In your 2009 budget request, you listed your expected 2008 anticipated accomplishments. These include issuing the final rule on the CDL-medical certificate link and the NPRM on the Registry. Do you still expect to achieve these goals?

Answer 5: Yes. The Agency remains committed to issuing the final rule on the merger of the medical certification and CDL issuance and renewal processes and the NPRM to establish the National Registry of Certified Medical Examiners (NRCME) in 2008. Secretary Peters signed both rulemaking documents and submitted them to the Office of Management and Budget (OMB) on August 21, 2008, for review and concurrence in accordance with Executive Order 12866, concerning regulatory planning and review.

Question 6: By what date (specific) can we expect a final rule linking the CDL with the Driver medical certificate?

Answer 6: The Department submitted the final rule on the merger of the medical certification and CDL issuance and renewal processes to OMB for review and concurrence on August 21, 2008.

Question 7: By what date (specific) can we expect the NPRM creating the National Registry of Certified Medical Examiners?

Answer 7: The Department submitted the NPRM on the NRCME to OMB for review and concurrence on August 21, 2008.

Question 8: What will State Driver Licensing Agencies (SDLA) be required to do to ensure that the certificate given them by the driver is legitimate? Will they be required to audit or authenticate the certificate?

Answer 8: The FMCSA's Medical Certification Requirements as Part of the CDL rulemaking would require the SDLA to record the information from the driver's medical certificate onto the driving record so that the information would be accessible through the CDLIS. The licensing agency would be required to date stamp the medical certificate when it is received, upload the information onto the driving record within 2 business days, and maintain an image or copy of the date-stamped medical certificate for at least 6 months. The SDLAs would not, however, be required to authenticate the certificate. FMCSA considered the burden on State licensing agencies and determined that it would not be appropriate at this time to impose such a requirement on the State agencies. If FMCSA imposed these additional requirements on States, they would need to adopt procedures for verifying with the medical examiner the validity of the medical certificate, or hire specially trained staff to review the medical examination report form (long form). FMCSA will encourage SDLAs to check periodically with medical examiners to verify the medical certificate.

Question 9: Why doesn't the proposed rule require drivers to submit the long form?

Answer 9: The FMCSA did not propose that drivers be required to submit the long form because the document includes detailed medical information that would be of limited value unless the State Driver Licensing Agency (SDLA) has specially trained personnel to review the forms. The States lack the expertise necessary to evaluate whether the physician interpreted properly the physical qualifications standards in making the determination about the driver's fitness for duty. By contrast, requiring the medical certificate would ensure that a State collects information on the medical examiner's fitness for duty determination and certain other information about the identity of the medical examiner and whether the driver is required to possess an exemption to the medical requirements or SPE certificate.

In addition, notwithstanding prohibitions on SDLAs' disclosing personal information obtained about an individual in connection with a motor vehicle record, pursuant to the Driver Privacy Protection Act, as amended (18 U.S.C. §§ 2721–2725), CDL holders would be likely to oppose the collection of detailed medical information. CDL holders have concerns about whether the SDLAs could ensure that the private health information that they collect, maintain, use, or transmit is protected not just against the risk of improper access but against the risk of interception during electronic transmission if the long form is saved electronically.

Question 10: Have you conducted any analysis of compliance in States that require the long form, such as California and Indiana vs. States that require just the medical card?

Answer 10: Yes. With the publication of the NPRM concerning the merger of the medical certification and CDL processes, FMCSA used an analysis of medical examination reports provided by the State of California in the regulatory evaluation. The Agency has met as well with the State of Indiana and reviewed analyses of its driver medical examination reports. In addition, to support FMCSA's medical-related regulatory development activities, the Agency has contracted with Road Ready, a large consortium of medical examiners with medical certification information for more than 64,000 interstate drivers, including the medical examination report. The contractor has begun the preliminary analyses of these driver medical examination reports.

Question 11: With all these outstanding and delayed rulemakings, why does your 2009 budget proposal request $1.3 million less for "Regulatory Development" than the enacted 2008 budget?

Answer 11: The Agency believes that the amount requested in FMCSA's FY 2009 budget proposal would fully fund all necessary regulatory activity. The Agency is making progress towards publishing the following significant rulemakings this year:

- Medical Certification Requirements as Part of the CDL, Final Rule;
- National Registry of Certified Medical Examiners, NPRM;
- Hours-of-Service, Final Rule;
- Electronic On-Board Recorders, Final Rule;
- New Entrant Safety Assurance Process, Final Rule;
- Comprehensive Safety Analysis 2010 Safety Fitness Determination Process, NPRM;
- Maintenance Responsibilities for Intermodal Equipment Providers, Final Rule.

Question 12: The upcoming medical certification and CDL rule will place an additional CDL program burden on each State licensing agency. This raises the question of how well each State licensing agency is currently complying with existing CDL program requirements, of which there are more than 30. How many states are currently in full compliance, and how many (and which) are not in full compliance with the federal CDL program requirements?

Answer 12: The FMCSA has completed an assessment of the States' compliance with the requirements of the Motor Carrier Safety Improvement Act (MCSIA). Currently, 47 States and the District of Columbia are in substantial compliance with the requirements. Substantial compliance means that the States are carrying out the functions required in the regulations. FMCSA reviews these States' compliance on a 3-year basis and works with States to correct any identified non-substantial deficiencies.

At this time, three States are substantially noncompliant: Minnesota, New Mexico, and Oregon. These States have been unable to pass the structured test administered by the American Association of Motor Vehicle Administrators (AAMVA) to validate States' abilities to receive records electronically from other States with the MCSIA data elements. Without the ability to receive electronic records of convictions, withdrawals, and other driver history information from other States, these three States cannot fully implement the requirements.

Question 13: For those States not in compliance, what are the primary non-compliance issues?

Answer 13: As noted above in the response to Question 12, Minnesota, New Mexico, and Oregon are not currently in compliance with MCSIA because they have been unable to pass the structured test administered by AAMVA to validate the States' abilities to receive records electronically from other States with the MCSIA data elements. This is mainly because without the ability to receive electronic records of convictions, withdrawals, and other driver history information from other States, these three States cannot fully implement the requirements.

Question 14: SAFETEA-LU required the Secretary to convene the CDL Advisory Committee last year and report its findings to Congress last August. It is almost a year later and we have not yet seen the report. Why has this report been so delayed and when can we expect to see it?

Answer 14: As instructed by the Congress in SAFETEA-LU, the CDL Task Force was established to study current impediments and foreseeable challenges to the CDL program's effectiveness. Its membership was required to include representation from State motor vehicle administrations, members of organizations representing government agencies, members of the Judicial Conference, representatives of the trucking industry, representatives of labor organizations, as well as safety advocates and other significant stakeholders with an interest in the CDL program.

The CDL Task Force was subject to Federal Advisory Committee Act requirements. Consistent with these provisions, development and approval of a charter was required. On December 1, 2006, FMCSA published a Federal Register Notice announcing the Agency's plans to convene the task force and to invite interested individuals to apply for participation. Based on review of the applications and recommendations from the FMCSA Administrator, the Secretary approved 15 members and appointed them to the task force on March 5, 2007.

The Task Force convened four times over a 5-month period. Members discussed issues and problems affecting their respective constituencies, focusing especially on areas that tend to inhibit the effectiveness of the CDL program. The Task Force submitted a report to FMCSA in December 2007, which FMCSA submitted to the Office of the Secretary on June 24, 2008. The report is pending in the final stages of Departmental clearance.

Question 15: How many medical examiners currently perform DOT exams and what impact will the certification program and national registry have on the number of medical examiners in the U.S.?

Answer 15: The FMCSA does not currently have estimates of the number of healthcare professionals who conduct medical examinations. These individuals are not currently required to identify themselves to the Agency. When the NRCME program is implemented, all medical examiners who intend to perform medical examinations and issue medical certificates for commercial motor vehicle drivers to meet the requirements of 49 CFR 391.41 concerning physical qualifications of truck and bus drivers would have to be trained, certified, and listed on the NRCME. FMCSA anticipates that some healthcare professionals who perform limited numbers of medical examinations will opt out of the National Registry program. However, some of the medical examiners who see limited numbers of drivers may continue to participate in the program, as these training programs provide continuing education credits toward licensure, an important incentive in the medical community. The National Registry program, once fully implemented, would provide drivers with access to a searchable national network of medical examiners so that they can receive a physical examination easily in any State.

Question 16: What standards-related recommendations from the Medical Review Board will FMCSA be addressing in regulation in the future, and in what order?

Answer 16: The Medical Review Board (MRB) has submitted recommendations to FMCSA concerning Schedule II medications, diabetes mellitus, cardiovascular disease, seizure disorders, sleep apnea, vision, musculoskeletal disease, renal disease, and medical fitness for duty, in that order. The Agency is currently reviewing the MRB's recommendations to determine whether to initiate rulemakings to implement the recommendations. If FMCSA determines that rulemaking actions are appropriate, the Agency will request public comment from all interested parties and fully consider any comments that are submitted in response to the rulemaking notices prior to making a final decision on changes to the physical qualifications standards.

The MRB will soon begin reviews of FMCSA's standards concerning neurological diseases, hearing, and psychiatric disease. Upon completion of these reviews, the Agency would then consider whether to initiate rulemakings on these topics.

Question 17: Have you done any statistical analysis of the safety of drivers who have received medical exemptions for conditions versus those who simply fail to disclose that they have those conditions?

Answer 17: No. The FMCSA has not performed a statistical analysis of the safety of drivers who have received an exemption versus individuals who fail to disclose that they have certain conditions because the Agency does not have data on drivers who fail to fully disclose their medical conditions at the time a physical examination is performed. The Agency has reviewed safety performance data on drivers who have obtained exemptions but the absence of information about the identity and driving records of

drivers who have failed to disclose their medical conditions precludes any meaningful comparison of the two groups' safety performance.

The FMCSA has completed a formal evaluation of the Federal Vision exemption program. Also, an evaluation of the SPE Certificate program is currently underway. These exempted drivers have been and are being compared to the general commercial driving population. The results from the vision exemption program study indicate the exempted drivers' safety performance was comparable to or better than that of drivers in the general commercial driving population. This information, along with recommendations from the MRB, is being considered by the Agency in determining whether the vision standard should be changed.

Question 18: How long does it take for FMCSA to process a request for an exemption?

Answer 18: The average number of days to process an exemption application after FMCSA receives all of the required information from the applicant is 68.9 for a diabetes exemption and 138.7 for a vision exemption. If FMCSA grants the request, the driver may operate with the exemption for up to 2 years. Drivers may submit an application to renew the exemption if they plan to continue operating commercial vehicles in interstate commerce.

One of the factors that contributes to the amount of time needed to complete the review of exemption applications is the notice-and-comment process the Agency is required (49 U.S.C. 31315(b)) to follow. This process includes announcing applicant's qualifications in a Federal Register notice and requesting public comment on the application. The public comments are analyzed by the Agency and discussed in a subsequent Federal Register notice of final disposition.

Question 19: Please provide the names of all Senior Executive Service employees that received bonuses in FY 2007 and FY 2008. For these individuals, please provide their name, title, division or office, base salary, and bonus amount. Please also identify (with detail) whether any of these individuals were recognized for Agency or Departmental awards.

Answer 19: Please see supplemental chart.

QUESTIONS OF THE HONORABLE GRACE F. NAPOLITANO

Question 1: Please provide the numbers on how much of FMCSA's 2009 budget proposal request for regulatory development is specifically allocated to medical regulatory changes discussed at the hearing.

Answer 1: The FMCSA medical program is not delineated within the Fiscal Year 2009 (FY09) President's Budget proposal. The program is funded within the FY09 Regulatory

Development Budget Request of $9,680,000. Currently, the FMCSA's expenditures for contract support for the Medical Program average approximately $6-7 million per year.

QUESTIONS OF THE HONORABLE JOHN J. DUNCAN, JR.

Question 1: We understand that the medical oversight system requires several components to be successful. Can you describe the role of the States and other agencies and individuals – now and in the future?

Answer 1: The State Driver Licensing Agencies (SDLAs) issue the CDLs and require certification from drivers that they meet all of the Federal driver qualifications rules under 49 CFR Part 391, including the physical qualification standards. Some State licensing agencies require the driver to present the medical card or submit the medical examination report (long form). Federal and State enforcement personnel enforce medical certification requirements during roadside inspections and during compliance reviews.

Under the proposal to merge the medical certification and the CDL issuance processes, States would be required to receive medical certification information from interstate CDL holders at the time of any licensing transaction (initial issue, renewal, transfer, or upgrade). Should the driver fail to present proof of medical certification, the State of licensure would not issue the interstate CDL. If the driver does not provide a new medical certificate at the time the old one expires, the licensing State would initiate an automatic downgrade of the CDL. Roadside enforcement officers would be able to electronically review the driver's CDL record at the SDLA and receive medical certification information. Non-CDL drivers would still be required to carry the medical certificate and provide it upon request.

Currently, the medical examiner who performs the medical examination is required to give a copy of the medical examiner's certificate to the driver and to retain the medical examination report on file in the medical examiner's office. A copy may also be provided to the employer. Under the proposed National Registry program, the Agency is considering a system in which medical examiners would be required to send monthly reports electronically to FMCSA with the name of each driver they examined and a numerical identifier for the driver, as determined by FMCSA. FMCSA would then use the reports to monitor a sample of medical examination reports and medical examiner performance, as well as look for trends that fall outside established norms.

Question 2: What actions has FMCSA taken in response to NTSB's open recommendations concerning the Agency's oversight of truck and bus drivers' physical qualifications, and what alternative safety strategies has the Agency proposed to NTSB for addressing the safety issue identified in the open recommendations?

Answer 2: The FMCSA meets regularly with the National Transportation Safety Board (NTSB) on its recommendations including the Board and staff, and NTSB's medical

officer. In addition to the two rulemakings currently under review at the Office of Management and Budget, the National Registry of Certified Medical Examiners NPRM and the Merger of the Medical Certification and CDL Issuance and Renewal Processes final rule, FMCSA has completed a number of activities that support full implementation of these rules and other SAFETEA LU requirements.

These include the following:

- Medical examiner training – The FMCSA has developed new instructions and improved guidelines for medical examiners to use in performing physical examinations of truck and bus drivers. FMCSA has completed the first modules of its new on-line medical examiner handbook as well as preliminary curriculum and certification testing materials;

- Medical certificate tracking - FMCSA has completed preliminary information technology (IT) system development work to support the National Registry rulemaking. Currently, the Agency is completing the development of the IT system business plan and technical requirements for this new data system, including models for linking the new system to other FMCSA data systems and considering the potential for expanding the capabilities of existing IT systems. Additionally, FMCSA is examining the Federal Aviation Administration medical examination data systems to benchmark technology and business requirements based upon the anticipated capabilities of the NRCME system;

- Medical standards – Currently, FMCSA is considering more than fifty recommendations from its MRB. To date, the MRB has held nine public meetings since 2007 and the Agency is considering whether to initiate rulemakings based on the MRB's recommendations for changes to the current medical standards to the current body of medical regulations; and

- Medical examiner guidance – FMCSA has implemented new web-based education strategies, such as electronic advisories to medical examiners and the use of an educational mailing list to which medical examiners may subscribe. To date, more than 6,000 medical examiners subscribe to the FMCSA medical programs mailing list for updates on medical guidance and standards. In addition, FMCSA responds to an average of 1,000 public inquiries on a weekly basis, including questions from the medical community.

Question 3: What progress have you made on initiatives other than the Medical CDL and National Registry rules? What guidance and instruction is available for medical examiners now? Please provide information on the progress FMCSA has made in medical standard review and development.

Answer 3: FMCSA has made significant progress in its review of truck and bus driver physical qualifications standards. FMCSA is currently considering more than fifty recommendations from the MRB for medical regulatory changes. Among the topics

being considered for rulemaking are standards concerning diabetes mellitus, cardiovascular disease, neurological disease, musculoskeletal diseases, medications, and vision requirements. New analyses of medical standards and guidance have been completed, and are pending expert panel and MRB deliberation, on the following topics: neurological diseases; hearing impairments; psychiatric diseases; and, musculoskeletal disorders.

Should the FMCSA make a preliminary determination that any of its medical standards should be revised based on the MRB's recommendations, the Agency would then initiate a rulemaking process in which public comments would be requested on any potential changes to the standards. The Agency would fully consider all comments submitted in response to the rulemaking notices before making any changes to the standards.

Question 4: Please describe the primary implementation obstacles the FMCSA has encountered in responding to the NTSB recommendations. What specific recommendations has the Agency been unable to implement because of uncertainties about statutory authority, lack of crash data to support rulemaking, or the availability of Federal and State motor carrier safety enforcement resources.

Answer 4: Generally, the primary implementation obstacles FMCSA has encountered in responding to NTSB medical recommendations is the lack of crash data to determine whether the problem identified in the study or report that led to the recommendation is an isolated occurrence or a widespread problem with drivers throughout the motor carrier industry or a segment of the industry. In addition, there is often limited data to determine whether the recommendations would provide an effective solution to the safety problems identified by the NTSB. Therefore, as FMCSA considers NTSB recommendations to initiate new rules, there are challenges in preparing cost-benefit analyses that support rulemaking decisions. This is particularly relevant given the large population of commercial drivers (it is estimated that approximately 300,000 truck and bus driver medical examinations are conducted monthly) as compared with other transportation modes. Other implementation obstacles include, but are not limited to, statutory authority governing the licensing of medical examiners by the States, State health information and privacy laws, and emerging issues in medical disability and the extent to which certain medical standards may be considered discriminatory if there is limited data concerning the safety risks of driving a truck or bus with those conditions.

Question 5: Based on FMCSA's review of the GAO report on CDL holders who receive disability payments, does the Agency believe there is a need to re-examine its physical qualifications standards? Does FMCSA consider the GAO report to provide a statistically valid sample of CDL holders for making inferences about the physical qualifications of the overall population of interstate CDL holders? Please explain.

Answer 5: No. FMCSA does not believe that the Governmental Accountability Office (GAO) report suggests a need to re-examine the physical qualifications standards in a manner different than what the Agency has already begun with its MRB. FMCSA's MRB began its review of the medical standards in 2007 and the Agency anticipates

continuing its medical standards and guidance review process. FMCSA is currently considering more than fifty recommendations from its MRB. To date, the MRB has held nine public meetings since 2007 and the Agency is considering whether to initiate rulemakings based on the MRB's recommendations for changes to the current medical standards.

The GAO report was not based on a statistically valid sample (only 15 cases) representative of the actual prevalence of medical conditions in the general and driving population. The study focuses on reports on specific cases rather than statistical samples that would support inferences about the entire commercial vehicle driver population.

Question 6: What type of study would enable FMCSA to make an accurate estimate of the number of interstate CDL holders that fail to meet the Agency's physical qualifications standards? Does the Agency have any plans to conduct such a study in light of the GAO report?

Answer 6: FMCSA would need to study a statistically relevant random sample of interstate CDL drivers, examined by trained and certified medical examiners who have access to the relevant medical histories to estimate the number of drivers who fail to meet the Agency's standards. FMCSA has accessed industry data showing a failure rate on medical examinations of 6.97 percent among 64,606 drivers (through FMCSA's contract with Road Ready). Additional estimates of the number of medically unqualified drivers would be possible after implementation of the National Registry rule and the requirement for medical examiners to report to FMCSA information about drivers who have failed their physical exams.

Question 7: Should motor carriers also have access to the medical examination results and the certificate of their drivers and should they be notified by the state licensing agency when the driver has become medically unqualified and, therefore, has an invalid CDL? Or, will there be a web-based process for employers to use to obtain this information?

Answer 7: The FMCSA's rulemaking concerning the merger of the medical certification and CDL issuance and renewal processes does not propose to limit an employer's ability to request that drivers provide a copy of the medical examiner's certificate or the medical examination long form. The rulemaking does not require that State licensing agencies notify employers if the medical certificate expires but the State would be required to notify drivers when the CDL is downgraded due to an expired medical certificate.

For motor carriers that have drivers enrolled in an electronic notification system (ENS), currently offered by a limited number of States and private sector companies, the carrier may receive an alert from the State or service provider that an action has been taken concerning the driver's record and then access the specific information via a Web site. However, the medical certification rulemaking does not require the use of an ENS to convey information about the driver's medical certification status. While this idea was considered, FMCSA did propose the use of an ENS as part of the medical certification

rulemaking because the Agency does not have data concerning the information technology (IT) systems technical requirements, the potential costs for implementation in all the States, or the safety benefits that would be provided through the mandatory use of an ENS.

Question 8: What is FMCSA doing about the problem of drivers self-certifying their medical qualifications? What action does FMCSA take when it discovers that a driver has falsified his/her medical certificate?

Answer 8: The FMCSA's CDL regulations require that individuals who operate or expect to operate commercial motor vehicles in interstate commerce must certify that they meet all applicable driver qualifications requirements under 49 CFR Part 391. This certification represents the driver's affirmation that he or she is aware of the Federal driver qualifications rules that must be satisfied regardless of whether he or she completes successfully the knowledge and skills testing to obtain a CDL. It should not be construed as allowing drivers to self-certify their medical certificates. The medical certificate must be completed by a medical examiner. The FMCSA may assess civil penalties against a driver that falsifies his medical certificate or medical examination report, i.e., the portion where the driver self-declares any medical conditions to the medical examiner, and assess civil penalties against a motor carrier that uses a driver with a falsified medical certificate.

Question 9: Does FMCSA review medical examination "long" forms when the motor carrier does obtain and retain a copy in its files? Why isn't it a requirement that the motor carrier keep a copy of the long form in the driver qualification file? Does FMCSA have any plans to make this a regulation?

Answer 9: FMCSA enforcement personnel may review the medical examination long forms during a compliance review (CR) if the motor carrier retains a copy in its file. The investigator may review the form to determine whether certain medically disqualifying conditions are noted on the form that would suggest that the driver should not have been certified by the medical examiner. The FMCSA does not require that motor carriers keep a copy of the long form because the Agency is able to contact medical examiners directly to verify the medical certificate if questions arise about a driver's physical qualifications and, if necessary, obtain a copy of the long form from the medical examiner. Currently, the Agency does not have any rulemakings underway to require motor carriers to retain the long form because individuals reviewing the form would need to have medical expertise to determine whether the information on the long form supports the medical examiner's decision to issue the driver a medical certificate. Therefore, motor carriers that do not have medical experts available to review the long form would not benefit from having a copy of the document.

Question 10: During the compliance review process, how do FMCSA investigators cite motor carriers for violations of the medical qualification standards? Over the past three years, in what percentage of compliance reviews did FMCSA or State investigators cite at least one instance of one of the above violations?

Answer 10: Violations of the medical qualification standards are cited in one of the following ways:

391.11(b)(4) – Using a physically unqualified driver

391.45(a) – Using a driver not medically examined and certified

391.45(b)(1) – Using a driver not medically examined and certified during the preceding 24 months

391.51(a) – Failing to maintain driver qualification files on each driver employed

391.51(b)(7) – Failing to maintain medical examiner's certificate in driver's qualification file

Over the past three years, 33 percent of CRs resulted in at least one of the above citations.

Fiscal Year	Number of CRs with Medical Cites	Total Number of CRs	Percent of CRs with Medical Cites
2006	5,001	15,193	32.9%
2007	5,368	16,109	33.3%
2008	3,674	10,789	34.1%

Question 11: How many acute violations did FMCSA investigators cite carriers for during compliance reviews over the past three years for using a physically unqualified driver? In the past three years to date, how many enforcement cases did FMCSA close that included one of the medical qualification violations indicated above?

Answer 11: From October 1, 2005, to present, 206 CRs conducted by Federal or State investigators cited 391.11 (b)(4), Using a Physically Unqualified Driver. In this same time period, 1,206 enforcement cases were completed that included one or more of the medical qualification violations referenced in question 10.

Question 12: During the compliance review process, FMCSA investigators sometimes uncover instances in which motor carriers or drivers have falsified medical qualification certificates in an attempt to avoid being physically examined and/or to conceal a disqualifying medical condition. How many enforcement cases did the FMCSA initiate in FY 2007 for this reason?

Answer 12: During FY 2007, FMCSA initiated 96 enforcement cases against motor carriers and drivers for fraudulently or intentionally falsifying a document. Of those, at least 42 were initiated against a motor carrier or driver for fraudulently or intentionally falsifying a medical examiner's certificate.

Question 13: Do roadside inspectors check for medical certificates during their inspections? Are CMV drivers put out of service for not having medical certificates or expired certificates? If a driver is cited at roadside for having an expired medical certificate or not in possession what are the responsibilities of the carrier?

Answer 13: As part of a North American Standard Inspection, roadside inspectors check routinely for medical certificates. Currently, not having a medical certificate or having an expired medical certificate are not Out-of-Service violations in the North American Standard Out-of-Service Criteria. If a driver is cited at the roadside for not having a medical certificate or not having one in his/her possession, the driver must provide the carrier with a copy of the written inspection report upon arrival at the next terminal or facility. Carriers must review the report and certify within 15 days that all violations noted have been corrected by signing the report and returning it to the issuing agency at the address listed on the form. Additionally, carriers are required to maintain a driver qualification file on each driver they employ. This file must contain, among a number of other items, the medical examiner's certificate of physical qualification to drive a commercial motor vehicle or a legible photographic copy of the certificate.

QUESTIONS OF THE HONORABLE HOWARD COBLE

Question 1: Of those who have applied for a diabetes exemption, how many did not meet the criteria or were denied for another reason? What kind of data have you collected on the individuals to whom you've granted diabetes exemptions?

Answer 1: As of June 30, 2008, FMCSA denied 168 of the 640 diabetes exemption applications it had processed because the applicants did not meet the eligibility criteria. The remaining 472 were found to satisfy the program's screening protocols and were granted exemptions to operate CMVs in interstate commerce. Generally, the drivers who were denied an exemption may reapply at a later date if they can demonstrate, with supporting documentation from their treating physician, their ability to manage their condition. Most drivers that were denied an exemption or a renewal of an exemption failed to demonstrate their ability to manage their condition, or failed to provide the required information during the renewal process.

Exempted individuals in the Federal diabetes program are required to submit a quarterly monitoring checklist completed by their treating endocrinologist to the Agency. Items on this checklist allow the Agency to determine that the individual is still managing their diabetes mellitus properly, that they have not suffered any severe hypoglycemic events, and that they are monitoring blood glucose levels while driving, and maintain the appropriate safe ranges as outlined by the program criteria.

In addition to quarterly monitoring, individuals in this program must be recertified by their treating endocrinologist, optometrist or ophthalmologist, and medical examiner annually. This information is required to be submitted to the Agency for review.

The motor vehicle safety record of all exempted individuals in the Federal diabetes program is monitored by the Agency on a semi-annual basis to ensure that program criteria continue to be met.

FMCSA rescinds exemptions when individuals no longer meet the criteria of the program or conditions of holding the exemption are not followed. The Agency has rescinded a total of 82 diabetes exemptions. Of the 82, 65 were for failure to provide monitoring information and 17 were for various reasons (i.e., endocrinologist no longer supported the exemption, severe hypoglycemic events, individual no longer takes insulin, individual began taking other medications that the treating physician did not believe could be taken while operating a CMV safely, etc.). The 65 applicants whose exemptions have been rescinded for these reasons received warning letters prior to the Agency taking action.

Question 2: Can you outline the process for handling applications and possible reasons for delays such as a lag in time when asking for additional information? Is your office doing anything to address delays? Have you evaluated the application paperwork itself to see if there are ways it could be clearer to applicants and their physicians?

Answer 2: The process for obtaining a diabetes exemption begins with the applicant submitting a request to the FMCSA Diabetes Exemption Program. If the application is missing certain information necessary for making a determination concerning the eligibility for the exemption, the Agency contacts the applicant to request the missing information. The Agency makes an average of 4.5 contacts to applicants in this facet of the program. This does not include correspondence between the Agency and the applicants' doctors to request information to expedite the application process. Once the Agency has obtained the requisite information, the application is processed as quickly as possible. The average time to grant a diabetes exemption is 68.9 days from the date the Agency receives all the requisite information. This process includes a statutorily mandated notice-and-comment process through the Federal Register.

In late 2007, a new streamlined application process was implemented to decrease the number of days until an exemption is granted. These changes to the process and in the handling of future applications improve the program's ability to serve drivers in need of the exemptions.

○