

**CHAPTER 83. PHYSICAL AND MENTAL CRITERIA,
INCLUDING VISION STANDARDS RELATING TO
THE LICENSING OF DRIVERS**

- Sec.
83.1. Purpose.
83.2. Definitions.
83.3. Visual standards.
83.4. Seizure disorder.
83.5. Other physical and medical standards.
83.6. Providers to report unqualified persons.

Authority

The provisions of this Chapter 83 issued under the Vehicle Code, 75 Pa.C.S. §§ 1517, 1518 and 6103, unless otherwise noted.

Source

The provisions of this Chapter 83 adopted May 18, 1979, effective May 19, 1979, 9 Pa.B. 1631; readopted April 19, 1991, effective April 12, 1991, 21 Pa.B. 1813, unless otherwise noted.

Notes of Decisions

A physician does not have a duty to control his patient's driving by reporting a physical condition to the Department of Transportation or to protect third persons from injuries sustained from unforeseeable accidents. *Crosby v. Sultz*, 592 A.2d 1337 (Pa. Super. 1991).

Cross References

This chapter cited in 67 Pa. Code § 75.3 (relating to vision examination); and 67 Pa. Code § 231.66 (relating to applicability).

§ 83.1. Purpose.

Section 1517(b) of the act (relating to medical advisory board) authorizes the Department to adopt physical and mental criteria, including vision standards, for licensing of drivers under Chapter 15 of the act (relating to licensing of drivers). These physical and mental criteria have been formulated by the Medical Advisory Board under the authority of sections 1517 and 1518 of the act (relating to medical advisory board and reports on mental or physical disabilities or disorders). In addition to their use by the Department in connection with its responsibilities under Chapter 15 of the act, these physical and mental criteria shall be used by physicians, CRNPs and physician assistants in conducting physical examinations of applicants for learner's permits and driver's licenses and by physicians and other persons authorized to diagnose and treat disorders and disabilities covered in this chapter in determining whether a person examined by the provider should be reported to the Department as having a disorder affecting the ability of the person to drive safely.

Authority

The provisions of this § 83.1 amended under the Vehicle Code, 75 Pa.C.S. §§ 1508, 1508.1, 1509 and 6103.

Source

The provisions of this § 83.1 adopted May 18, 1979, effective May 19, 1979, 9 Pa.B. 1631; amended April 11, 1986, effective April 12, 1986, 16 Pa.B. 1279; readopted April 19, 1991, effective April 12, 1991, 21 Pa.B. 1813; amended January 23, 1998, effective January 24, 1998, 28 Pa.B. 364. Immediately preceding text appears at serial page (219591).

Notes of Decisions*Private Cause of Action*

Estates of motorists killed when hit by car driven by patient who had blacked out due to a seizure disorder, could not seek damages for physician's failure to properly report his patient's condition to the Department; the Vehicle Code only requires physicians to provide medical information regarding the conditions of certain licensed drivers to the Commonwealth so it can determine if operating privileges should be revoked, and does not authorize a private cause of action based upon physician's failure to report a driver's condition to Department of Transportation. *Hospodar v. Schick*, 885 A.2d 986, 989 (Pa. Super. 2005).

§ 83.2. Definitions.

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

Act—75 Pa.C.S. § 101—9910 (relating to Vehicle Code).

Aura—An epileptic episode, sometimes experienced before or in lieu of a seizure, which does not alter an individual's ability to think clearly or interfere with an individual's mechanical or sensory ability to operate a motor vehicle.

CRNP—Certified registered nurse practitioner—A registered nurse licensed in this Commonwealth who is certified, by both the State Board of Nursing and the State Board of Medicine, in a particular clinical specialty area and who, while functioning in the expanded role as a professional nurse, performs acts of medical diagnosis or prescription of medical therapeutic or corrective measures in collaboration with and under the direction of a physician licensed to practice medicine in this Commonwealth.

Daylight—Hours between sunrise and sunset.

Department—The Department of Transportation of the Commonwealth.

Licensed optometrist—A doctor of optometry licensed by the State Board of Optometry.

Licensed physician—A doctor of medicine licensed by the State Board of Medicine or a doctor of osteopathy licensed by the State Board of Osteopathic Medical Examiners.

Nocturnal—As used in relation to seizures, the term means occurring during sleep.

Seizure—A paroxysmal disruption of cerebral function characterized by altered consciousness, altered motor activity or behavior identified by a licensed physician as inappropriate for the individual.

Seizure disorder—Condition in which an individual has experienced a single seizure of electrically diagnosed epilepsy, or has experienced more than one seizure not including seizures resulting from an acute illness, intoxication, metabolic disorder, or trauma.

Telescopic lens—A telescopic low vision device.

Authority

The provisions of this § 83.2 amended under the Vehicle Code, 75 Pa.C.S. §§ 1508, 1508.1, 1509, 1517, 1518 and 6103.

Source

The provisions of this § 83.2 adopted May 18, 1979, effective May 19, 1979, 9 Pa.B. 1631; amended April 11, 1986, effective April 12, 1986, 16 Pa.B. 1279; readopted April 19, 1991, effective April 12, 1991, 21 Pa.B. 1813; amended January 23, 1998, effective January 24, 1998, 28 Pa.B. 364; amended July 16, 2004, effective July 17, 2004, 34 Pa.B. 3718. Immediately preceding text appears at serial pages (240838) and (262039).

Cross References

This section cited in 67 Pa. Code § 71.2 (relating to definitions).

§ 83.3. Visual standards.

(a) *Driving without corrective lenses.* A person with visual acuity of 20/40 or better combined vision may drive without corrective lenses.

(1) If a person with visual acuity of 20/40 or better combined vision, however, has visual acuity of less than 20/40 in one eye, the vision in that eye shall be corrected to its best visual acuity.

(2) A person with visual acuity of 20/40 or better combined vision and who has visual acuity of less than 20/40 in one eye, may drive without corrective lenses upon determination by a licensed optometrist or ophthalmologist that the person's combined vision would not be improved by the use of corrective lenses.

(b) *Driving with corrective lenses.* A person with visual acuity of less than 20/40 combined vision shall wear lenses correcting combined vision to 20/40 or better while driving, except that if correction to 20/40 is not possible, the person may drive in daylight hours only if one of the following are met:

(1) The combined vision has been corrected to 20/60 or better.

(2) Visual acuity is less than 20/60 combined vision but at least 20/70 combined vision with best correction, but only upon recommendation of a licensed optometrist or licensed physician who has equipment to properly evaluate visual acuity.

(c) *Visual acuity of less than 20/70.*

(1) A person with visual acuity of less than 20/70 combined vision but at least 20/100 combined vision with best correction may apply for and may be issued a restricted license only upon recommendation of a licensed optometrist or ophthalmologist or licensed physician who has equipment to properly evaluate visual acuity, and only if the following conditions or limitations are satisfied:

(i) The person takes and successfully passes a complete vision examination, including plotted visual fields, upon application and annually thereafter.

(ii) The person takes and successfully passes a driver's examination upon application.

(iii) The person's driving privilege is limited to roads other than freeways, as defined in 75 Pa.C.S. § 102 (relating to definitions).

(iv) The person's driving privilege is limited to passenger vehicles weighing no more than 10,000 pounds, and excludes operation of a motorcycle.

(v) If determined by the Department to be appropriate, the person's driving privilege is limited to driving within a limited radius of the person's residence as recommended by a licensed physician.

(2) Violation of these conditions or limitations shall result in the recall of the restricted license. In addition, an annual review of the person's accident and violation history will be conducted by the Department and the restricted license may be recalled if the Department determines that the person was involved in an at fault accident or convicted of two moving violations committed within a 1-year period.

(d) *Visual acuity of less than 20/100.* A person with visual acuity of less than 20/100 combined vision with best correction will not be qualified to drive.

(e) *Vision requirements.* A person shall have a combined field of vision of at least 120° in the horizontal meridian, excepting the normal blind spots.

(f) *Sight in one eye.* A person may be adequately sighted in only one eye and still meet the requirements of this section. The person's driving privilege will be restricted to vehicles having mirrors so located as to reflect to the person a view of the highway for a distance of at least 200 feet to the rear.

(g) *Telescopic lenses.* Correction through the use of telescopic lenses is not acceptable for purposes of meeting acuity requirements.

Authority

The provisions of this § 83.3 amended under the Vehicle Code, 75 Pa.C.S. §§ 1517, 1518 and 6103.

Source

The provisions of this § 83.3 adopted May 18, 1979, effective May 19, 1979, 9 Pa.B. 1631; amended April 11, 1986, effective April 12, 1986, 16 Pa.B. 1279; readopted April 19, 1991, effective April 12, 1991, 21 Pa.B. 1813; amended July 16, 2004, effective July 17, 2004, 34 Pa.B. 3718. Immediately preceding text appears at serial pages (262089) to (262090).

Notes of Decisions

Doctor Liability

An ophthalmologist will not be held liable to a third party where the ophthalmologist failed to inform his patient or the Department of Transportation (PennDOT) of the patient's poor visual acuity and, subsequently, the patient injured the third party while driving her automobile, because the physician's failure to notify PennDOT of a disorder does not give rise to a private remedy, and because it is an unreasonable extension of the concepts of duty and foreseeability to broaden a physician's duty to a patient and hold a physician liable to the public at large within the factual scenario of this case. *Estate of Witthoeft v. Kiskaddon*, 733 A.2d 623 (Pa. 1999).

Although the doctor should have reported the patient's poor visibility to the Department of Transportation, that failure to act does not expose the doctor to liability for injuries caused by a patient's operation of a vehicle. *Estate of Witthoeft v. Kiskaddon*, 676 A.2d 1223 (Pa. Super. 1996); affirmed 733 A.2d 623 (Pa. 1999).

General Comments

This regulation has the force and effect of a statute. *Dare v. Department of Transportation*, 682 A.2d 413 (Pa. Cmwlth. 1996).

License Properly Revoked

Individual properly had driver's license revoked where an optometrist's examination revealed that the individual was sighted only in one eye and the individual's field of vision was less than 140° in the horizontal meridian, except for the normal blind spots. *Dare v. Department of Transportation*, 682 A.2d 413 (Pa. Cmwlth. 1996).

Sight in One Eye

Subsection (e) of this regulation only provides that sight in one eye, alone, will not preclude an individual from meeting the visual standards. Rather, if such a person meets the requirements of this regulation and restricts his or her driving to vehicles which have adequate rear view mirrors, then he or she may be found competent to drive. However, there is no language in subsection (e) allowing an individual sighted in one eye only, who uses rear view mirrors, to be excused from meeting the requirements of subsections (a)—(f). *Dare v. Department of Transportation*, 682 A.2d 413 (Pa. Cmwlth. 1996).

Telescopic Lenses

The provisions of this section (formerly 67 Pa. Code § 157.3), which disallow the use of telescopic lenses to meet visual acuity requirements for driver's licenses, do not violate section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794) or equal protection or due process provisions of the Federal or State constitutions. *Department of Transportation v. Liberati*, 472 A.2d 741 (Pa. Cmwlth. 1984).

Vision Requirements

Evidence that a 72-year-old motorist has adapted his driving to minimize the effects of retinitis pigmentosa, which substantially impairs the field of vision, was not relevant to a determination of competency under this regulation which requires a motorist to have a combined field of vision of at least 140° in the horizontal median, excepting blind spots, where the motorist was restricted to the presentation of objective evidence showing that the Department of Transportation's report of his field-of-vision measurement was incorrect. *Byers v. Department of Transportation*, 735 A.2d 168 (Pa. Cmwlth. 1999).

Once the Department of Transportation establishes a licensee's incompetence to drive, due process requires that the licensee be given an opportunity to demonstrate objectively that his or her vision is sufficient to meet the vision requirements. *Byers v. Department of Transportation*, 735 A.2d 168 (Pa. Cmwlth. 1999).

Section 83.3(d) does not violate due process, where the regulation requires merely that an individual possess certain minimum visual requirements to operate a motor vehicle, much like minimum age requirements. *Byers v. Department of Transportation*, 735 A.2d 168 (Pa. Cmwlth. 1999).

§ 83.4. Epilepsy.

(a) *General.* A person who has a seizure disorder will not be qualified to drive unless a licensed physician reports that the person has been free from seizure for at least 6 months immediately preceding, with or without medication. A person will not be disqualified if the person has experienced only auras during that period.

(b) *Waiver.* Waiver of the freedom from seizure requirement may be made upon specific recommendation by a licensed physician if one of the following conditions apply:

(1) A strictly nocturnal pattern of seizures or a pattern of seizures occurring only immediately upon awakening has been established over a period of at least 2 years immediately preceding, with or without medication.

(2) A specific prolonged aura accompanied by sufficient warning has been established over a period of at least 2 years immediately preceding, with or without medication.

(3) The person previously had been free from seizure for a 6 month period and the subsequent seizure or seizures occurred as a result of a prescribed change in or removal from medication while under the supervision of a licensed physician. This waiver will only be provided upon reinstatement of previous medication.

(4) The person previously had been free from seizure for 6 months and the subsequent seizure or seizures occurred during or concurrent with a nonrecurring transient illness, toxic ingestion, or metabolic imbalance.

(c) *Reporting requirements for provider.* Every provider who treats a person who has experienced a single seizure shall provide, consistent with 75 Pa.C.S. § 1518(b) (relating to reports on mental or physical disabilities or disorders), a report to the Department which shall constitute cause for the Department to direct the person to undergo an examination prescribed under 75 Pa.C.S. § 1519 (relating to determination of incompetency).

Authority

The provisions of this § 83.4 amended under the Vehicle Code, 75 Pa.C.S. §§ 1517, 1518 and 6103.

Source

The provisions of this § 83.4 adopted May 18, 1979, effective May 19, 1979, 9 Pa.B. 1631; readopted April 19, 1991, effective April 12, 1991, 21 Pa.B. 1813; amended July 16, 2004, effective July 17, 2004, 34 Pa.B. 3718. Immediately preceding text appears at serial page (262091).

Notes of Decisions

Due Process

This regulation, which provides for the revocation of one's operating privilege for a period of one year upon the occurrence of only a single epileptic seizure, without the licensee having an opportunity to present medical evidence in an effort to establish his or her competency to drive, violates due process. *Department of Transportation v. Clayton*, 684 A.2d 1060 (Pa. 1996).

Clearly, precluding unsafe drivers, even those who are potentially unsafe drivers, from driving on the highways is an important interest. But, it is not an interest which outweighs a person's interest in retaining his or her license so as to justify the recall of that license without first affording the licensee the process to which he or she is due. Indeed, since competency to drive is the paramount factor behind this regulation, any hearing which eliminates consideration of that very factor is violative of procedural due process. *Department of Transportation v. Clayton*, 684 A.2d 1060 (Pa. 1996).

Due Process Violated

This section, which creates an irrebuttable presumption that a person who has had one seizure is incompetent to drive for at least 1 year, violates procedural due process since the time and expense of litigation do not overcome the interest of the licensee in his operating privilege. *Department of Transportation v. Brown*, 630 A.2d 927 (Pa. Cmwlth. 1993).

§ 83.5. Other physical and medical standards.

(a) *General disqualifications.* A person who has any of the following conditions will not be qualified to drive:

- (1) Unstable or brittle diabetes or hypoglycemia, unless there has been a continuous period of at least 6 months freedom from a related syncopal attack.
- (2) Cerebral vascular insufficiency or cardiovascular disease which, within the preceding 6 months, has resulted in one or more of the following:
 - (i) Syncopal attack or loss of consciousness.
 - (ii) Vertigo, paralysis or loss of qualifying visual fields.
- (3) Periodic episodes of loss of consciousness which are of unknown etiology or not otherwise categorized, unless the person has been free from episode for the year immediately preceding.

(b) *Disqualification on provider's recommendation.* A person who has any of the following conditions will not be qualified to drive if, in the opinion of the provider, the condition is likely to impair the ability to control and safely operate a motor vehicle:

- (1) Loss of a joint or extremity as a functional defect or limitation.
- (2) Impairment of the use of a joint or extremity as a functional defect or limitation.
 - (i) The provider should inform the patient of the prohibition against driving due to the functional impairment.
 - (ii) The provider shall inform the Department in writing of the impairment if the condition has lasted or is expected to last longer than 90 days.
- (3) Rheumatic, arthritic, orthopedic, muscular, vascular or neuromuscular disease.
 - (i) The provider should inform the patient of the prohibition against driving due to the functional impairment.
 - (ii) The provider shall inform the Department in writing of the impairment if the condition has lasted or is expected to last longer than 90 days.
- (4) Cerebral vascular insufficiency or cardiovascular disease which, within the preceding 6 months, has resulted in lack of coordination, confusion, loss of awareness, dyspnea upon mild exertion or any other sign or symptom which impairs the ability to control and safely perform motor functions necessary to operate a motor vehicle.
- (5) Mental disorder, whether organic or without known organic cause, as described in the current Diagnostic and Statistical Manual of Mental Disorders (DSM) published by the American Psychiatric Association, 1700 18th Street

NW, Washington, DC 20009, especially as manifested by the symptoms set forth in (i)—(iii). While signs or symptoms of mental disorder may not appear during examination by the provider, evidence may be derived from the person's history as provided by self or others familiar with the person's behavior.

(i) Inattentiveness to the task of driving because of, for example, pre-occupation, hallucination or delusion.

(ii) Contemplation of suicide, as may be present in acute or chronic depression or in other disorders.

(iii) Excessive aggressiveness or disregard for the safety of self or others or both, presenting a clear and present danger, regardless of cause.

(6) Periodic episodes of loss of attention or awareness which are of unknown etiology or not otherwise categorized, unless the person has been free from episode for the year immediately preceding, as reported by a licensed physician.

(7) Use of any drug or substance, including alcohol, known to impair skill or functions, regardless whether the drug or substance is medically prescribed.

(8) Other conditions which, in the opinion of a provider, is likely to impair the ability to control and safely operate a motor vehicle.

(c) *Driving examination.* A person who has any of the conditions enumerated in subsection (b)(1), (2), (3) or (8) may be required to undergo a driving examination to determine driving competency, if the Department has reason to believe that the person's ability to safely operate a motor vehicle is impaired. The person may be restricted to driving only when utilizing appropriate adaptive equipment.

Authority

The provisions of this § 83.5 amended under the Vehicle Code, 75 Pa.C.S. §§ 1517, 1518 and 6103.

Source

The provisions of this § 83.5 adopted May 18, 1979, effective May 19, 1979, 9 Pa.B. 1631; readopted April 19, 1991, effective April 12, 1991, 21 Pa.B. 1813; amended July 16, 2004, effective July 17, 2004, 34 Pa.B. 3748. Immediately preceding text appears at serial pages (262092) to (262093).

Notes of Decisions

Alcoholism

Physicians may render an opinion based on a review of records. Therefore, the physician was justified in formulating a medical opinion based on the information provided by the certified registered nurse practitioner indicating that the petitioner was an alcoholic and the suspension of the petitioner's license under this regulation was justified. *Satler v. Department of Transportation*, 670 A.2d 1205 (Pa. Cmwlth. 1996).

A letter from a physician as to the driver's alcoholism, although hearsay, is admissible and may provide basis to recall an operator's license. *Ploof v. Commonwealth*, 590 A.2d 1318 (Pa. Cmwlth. 1991); appeal denied 606 A.2d 903 (Pa. 1992).

Diabetes

A driver's diabetic condition which was neither unstable nor brittle did not place the driver within this provision and the driver's physician was not liable to third parties due to the driver's condition. *Crosby v. Sultz*, 592 A.2d 1337 (Pa. Super. 1991).

Evidence

If the Department alleges "lapse of consciousness" under 67 Pa. Code § 83.5(a)(4) in its official license recall notice, it must prove this at trial, even though an unspecified "other condition" under subsection (a)(9) may be applicable. *Commonwealth v. Kipp*, 18 Pa. D. & C.3d 592 (1980).

Certified records of the Department's medical reports are insufficient proof of incompetency under subsection (a)(9) unless the examining physician is produced as a witness. *Commonwealth v. Kipp*, 18 Pa. D. & C.3d 592 (Pa. Com. Pl. 1980).

Incompetency

In determining incompetency to drive, the Department may compare a licensed driver's physician's report with the standards defining incompetency in subsection (a)(1)—(9), provided a properly qualified person makes the comparison. *Commonwealth v. Kipp*, 18 Pa. D. & C.3d 592 (1980).

Physicians

For reasons of public safety, it is the physician's opinion that there is a medical condition sufficient to impair the licensee, and not the specific diagnosis, which is paramount. *Commonwealth v. Oswald*, 24 D & C 4th 231 (1995).

§ 83.6. Providers to report unqualified persons.

Physicians and other persons authorized to diagnose and treat disorders and disabilities defined by the Medical Advisory Board shall report to the Department, in writing, the full name, date of birth and address of every person 16 years of age and older diagnosed as having any specified disorder or disability within 10 days, under 75 Pa.C.S. § 1518 (relating to reports on mental or physical disabilities or disorders).

Authority

The provisions of this § 83.6 issued under the Vehicle Code, 75 Pa.C.S. §§ 1517, 1518 and 6103.

Source

The provisions of this § 83.6 adopted July 16, 2004, effective July 17, 2004, 34 Pa.B. 3718.

[Next page is 84-1.]

83-10

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