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Date: 2/19/2008 8:13:40 PM
Subject: Classified Licenses E AND F (Medical Card Requirement)

Marcia,

You have asked that I give you two opinions about the interaction of CDLs and RVs, looking toward what sort of medical exams are required, if any.

First, you asked whether you correctly understood the classes of CDLs.

Code Section 56-1-2100(B)(1) lists the classifications. [This comes from Section 383.91.]

Commercial driver licenses may be issued with the following classifications, endorsements, and restrictions:

(1) Classifications:

(a) Class A: A combination of vehicles with a gross combination weight rating of twenty six thousand one pounds or more provided the gross vehicle weight rating of the vehicle being towed is in excess of ten thousand pounds.

(b) Class B: A single vehicle with a gross vehicle weight rating of twenty six thousand one pounds or more, or any such vehicle towing a vehicle not in excess of ten thousand pounds gross vehicle weight rating.

(c) Class C: A single vehicle, or combination of vehicles, that are not Class A or B vehicles but either designed to transport 16 or more passengers including the driver, or are placarded for hazardous materials under 49 CFR, Part 172, subpart F.

That leaves Classes E and F undefined in South Carolina law, even though Section 56-1-2085(C) makes reference to those classes of license. I have looked and looked for the definitions, to no avail. James Barwick has said that the South Carolina Drivers Handbook defines Class E and F licenses as follows.

Class E - Non-commercial single unit vehicles that exceed 26,000 pounds gross vehicle weight

Class F - Non-commercial combination vehicles that exceed 26,000 pounds gross vehicle weight

Second, you have asked whether the issuance of a Class E or F CDL requires a medical certification.

Code Section 56-1-2005 adopts the federal regulations for application in South Carolina. I do not see that statute as expanding the federal regulations in any way. That is, in a place where the federal regulations only apply to interstate commerce, I do not see that 56-1-2005 makes those same regulations now apply to intrastate commerce. (Of course, the regs do apply to intrastate commerce where they specifically say so.)

The key Parts to the regulations seem to be 49 CFR 383 (Commercial Driver's License Standards, Requirements and Penalties), 390 (Federal Motor Carrier Safety Regulations), and 391 (Qualifications of Drivers and Longer Combination Vehicle (LCV) Driver Instructors). (See links below.)

The book version of Part 383 has a large number of interpretations. Question 3 and its Guidance are

Question 3: Does part 383 apply to drivers of recreational vehicles?

Guidance: No, if the vehicle is used strictly for non-business purposes.

My research to find the reasoning behind that guidance is that recreational vehicles used strictly for non-business purposes do not fit Part 383's definition of commercial motor vehicle. (Commercial motor vehicle (CMV) means a motor vehicle or combination of motor vehicles *used in commerce* to transport passengers or property)

They give no guidance on how a state agency is supposed to know what "strictly for non-business purposes" means. I would think that many people use them as a mobile home for business, such as carnival workers and people who work sporting events or trade shows.

For anyone who is required to have a CDL, Section 391.41 may provide the quick answer to your question. It says

Sec. 391.41 Physical qualifications for drivers.

(a) A person shall not drive a commercial motor vehicle unless he/she is physically qualified to do so and, except as provided in Sec. 391.67 [farm vehicle drivers of articulated commercial motor vehicles], has on his/her person the original, or a photographic copy, of a medical examiner's certificate that he/she is physically qualified to drive a commercial motor vehicle.

Section 391.41(b) goes on to specify the physical qualifications.

Section 391.43(a) addresses who can perform the exam and do the certification.

Sec. 391.43 Medical examination; certificate of physical examination.

(a) Except as provided by paragraph (b) of this section, the medical examination shall be performed by a licensed medical examiner as defined in Sec. 390.5 of this subchapter.

Section 390.5 defines a medical examiner.

Sec. 390.5 Definitions.

Medical examiner means a person who is licensed, certified, and/or registered, in accordance with applicable State laws and regulations, to perform physical examinations. The term includes but is not limited to, doctors of medicine, doctors of osteopathy, physician assistants, advanced practice nurses, and doctors of chiropractic.

I recall having heard that physical exams to meet Section 391.41(b) specifications are expensive. That may be, but I have not found an exemption for recreational vehicle drivers. Personally, having read Section 391.41(b), I do not want to be on the road with anyone who is driving a large vehicle and cannot get a doctor to sign off on those qualifications.

Therefore, as I see it now, a person driving a recreational vehicle for commercial purposes must have a Section 391.41 physical certification.

That leaves the question of persons driving recreational vehicles for non-business purposes. It has been proposed that 56\u2019-1\u2019-130(A) gives the DMV the right to ask for medical exams for any class of person we see fit. That subsections says, in part,

(A) The Department of Motor Vehicles shall examine every applicant for a driver's license, except as otherwise provided in this article. The examination shall include a test of the applicant's eyesight, his ability to read and understand highway signs regulating, warning, and directing traffic, and his

knowledge of the traffic laws of this State and shall include an actual demonstration of ability to exercise ordinary and reasonable control in the operation of the type motor vehicle, including motorcycles, for which a license is sought. *The department may require a further physical and mental examination as it considers necessary to determine the applicant's fitness to operate a motor vehicle upon the highways, the further examination to be at the applicant's expense.*

There is no legislative history to show us what the Legislature meant when it wrote the italicized sentence sometime prior to 1975.

One interpretation would be that the Legislature meant that the DMV could pick out individual persons for additional examinations. That interpretation would meld with 56-1-221(C), which says,

SECTION 56-1-221. Medical advisory board.

(C) Having cause to believe that a licensed driver or applicant may not be physically or mentally qualified to be licensed, the Department of Motor Vehicles may obtain the advice of the board. The board may formulate its advice from records and reports or may cause an examination and report to be made by one or more members of the board or any other qualified person it may designate. The additional examination is at the expense of the applicant or licensed driver. The licensed driver or applicant may cause a written report to be forwarded to the board by a physician or optometrist of his choice, and it must be given consideration by the board.

An alternate interpretation would be that the Legislature meant that the DMV could decide that a *further physical and mental examination* could be required for every person applying for a particular class of license, such as E, F, or M. This would seem to conflict with the fact that the federal regulations, as adopted by our Legislature, do not require such exams for non-business drivers. Another reason that this may not have been legislative intent is that if the DMV requires an exam (as compared with federal law requiring it), then the DMV would not be able to interpret the exam results but would have to send them to the Medical Advisory Board, pursuant to 56-1-221, for review. That Board is not presently equipped to decide whether a person is fit to drive a recreational vehicle over 26,000 pounds unless it simply applied the section 391.41(b) rules.

My conclusion is that the Legislature has not given the DMV the authority to require a Section 391.41 medical certificate for all persons obtaining Class E or F licenses. If the DMV believes this is a safety issue that needs resolution, it should seek clear legislation.

Val

For anyone who wants to search the federal regs, here are some links.

49 CFR 383 - Commercial Driver's License Standards, Requirements and Penalties

<http://frwebgate6.access.gpo.gov/cgi-bin/waisgate.cgi?>

[WAISdocID=45877935040+17+0+0&WAISaction=retrieve](http://frwebgate6.access.gpo.gov/cgi-bin/waisgate.cgi?WAISdocID=45877935040+17+0+0&WAISaction=retrieve)

49 CFR 390 - Federal Motor Carrier Safety Regulations

<http://frwebgate6.access.gpo.gov/cgi-bin/waisgate.cgi?>

[WAISdocID=45877935040+78+0+0&WAISaction=retrieve](http://frwebgate6.access.gpo.gov/cgi-bin/waisgate.cgi?WAISdocID=45877935040+78+0+0&WAISaction=retrieve)

49 CFR 391 - Qualifications of Drivers and Longer Combination Vehicle (LCV) Driver Instructors

<http://frwebgate4.access.gpo.gov/cgi-bin/waisgate.cgi?>

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