

ABA Position Paper

Driver Qualification Information

Issue

During the hiring process, a motorcoach operator may not have access to critical information necessary to determine a driver's fitness to work.

Background

Whether or not a company hires a driver depends on many factors. What is the candidate's prior driving and accident history? Have they ever tested positive for drug or alcohol use? Do they have a criminal record? Are they physically qualified to drive? Often, the ability to evaluate these factors is made difficult due to a lack of, or the veracity of, information provided by the applicant, their prior employer(s) or state agencies.

For example, problems can occur if a candidate provides false information during the hiring process. This can be compounded if a prior employer fails to provide federally required work history; or, when state or local courts mask or plea-bargain down serious violations thereby allowing a bad driver to continue to drive. Also if a company is unable to obtain prior drug and alcohol test results or accurate criminal background information the process breaks down. A prospective employer must also rely on the medical qualification card provided by a candidate as evidence that they are medically fit to work; or pay to have the driver re-examined by a medical practitioner that is trusted by the motorcoach operator. Currently there is no national registry of Department of Transportation (DOT) qualified medical providers, so a carrier cannot be confident of the medical findings. Currently, medical examiners are not required to undergo any training in order to certify to the DOT their understanding of the regulations. Another problem for an employer is a frequent inability to obtain previous drug and alcohol test results. Many applicants will be truthful, while others may not. Employers may only obtain this information from an applicant's previous employer through the applicant's knowledge and consent. If an applicant omits a previous employer from their application, or if a previous employer will not provide the needed information, then the applicant may be potentially unsafe to drive, which leaves the prospective employer legally exposed.

There is a provision in SAFETEA-LU, which requires the establishment of both an FMCSA-managed medical review board and a national registry of DOT medical examiners. In providing this authority Congress also allowed the medical examiner community the option of "self-certifying" to the FMCSA their understanding of, and duties under, the regulations. The FMCSA is currently engaging in a rulemaking to enact these provisions.

ABA Position

ABA opposes "self-certification" of medical examiners without proof of understanding. ABA believes that any "self-certification" on the part of a medical provider should be based on evidence of their knowledge being submitted to the DOT prior to being added to the list of qualified providers. Such evidence might include documents showing completion of a medical regulations training program; or an agency administered test, or a combination of both. ABA also believes that: medical review officers should be

required to post positive drug and alcohol results onto a central federal database, which can be accessed by a motor carrier during the hiring process; and the FMCSA should find a means to stop the masking of a driver's history of serious driving violations which can occur when sympathetic judges plea-bargain down the violation so as not to deprive a driver of their primary employment.

Finally, the problems described above highlight the need for a national, centrally-controlled federal database. This database would contain all critical safety and security information on all CDL holders. This information would be accessible to motor carriers during the hiring process.

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