STATE OF MINNESOTA

DEPARTMENT OF PUBLIC SAFETY

In the Matter of the Proposed Rules Relating to Physical and Mental Qualifications of Motor Vehicle Operators.

STATEMENT OF NEED AND REASONABLENESS

This Statement of Need and Reasonableness is organized as much as possible in sections corresponding to each particular rule. However, comments made in one section may also, on occasion, apply to rules other than the rule that is the principle concern of that particular section.

I. Purpose and Scope

Rules A and B are essentially self-explanatory. Rule C defines the phrase "good cause to believe", which appears in several sections throughout these rules, and perhaps more importantly, sets forth the sources of information upon which good cause to believe may be based. This section is needed because some of the regulated groups are concerned about what types of information would be used by the Commissioner in determining whether he had good cause to believe. This section was developed with extensive help and cooperation from the Minnesota Mental Health Association. Good cause to believe is reasonably defined as in essence a good faith belief, which is specified as a belief that is not arbitrary, irrational, unreasonable or irrelevant. By excluding these types of beliefs, the proposed rule alleviates any possible concern that the Commissioner would claim he had good cause to believe certain facts in a situation in which such a belief would be absurd, unreasonable or ridiculous. In addition, the information on which the belief is based must be of one of the three specified types. It will be noted that the types of information are in essence both relatively concrete and also verifiable by the Commissioner or the applicant. At the same time, the proposed rule is not so restrictively written

so that the driving public would be put in any unreasonable danger due to the inability of the Commissioner to investigate circumstances that might eventually warrant restriction or denial of driving privileges.

II. Vision

"Good vision is essential for the safe operation of a motor vehicle." Functional Aspects of Driver Impairment, U.S. Department of Transportation, National Highway Safety Administration, DOT HS 805 460, October 1980 (hereinafter "DOT") at 37. Accord, Driver Licensing Guidelines for Medical Advisory Boards, U.S. Department of Health, Education and Welfare, Public Health Service, Publication No. 1996 (1969) (hereinafter "HEW") at 31. "Medical Guide for Physicians in Determining Fitness to Drive a Motor Vehicle", Journal of the American Medical Association, March 14, 1959, Volume 169, pp. 1195-1207 (hereinafter "AMA-1") (reprint pamphlet at 16). Drivers of motor vehicles need to be able to see sufficiently both so that they can direct their own vehicle in the proper fashion, and also so that they can take action to avoid whatever traffic hazards or situations may develop. Good vision is also needed to observe and interpret traffic signs and signals. A driver who cannot see where he or she is going is inherently a dangerous driver.

Rule A, as is required by statute, requrires every applicant for driver's license to submit to a vision screening. The rule provides that the device used for the vision screening shall be designed to screen 20/40 or better and shall be of the type accepted by the American Medical Association. It is necessary to have the screening device in order for the Department to comply with the statutory directive to examine the eyesight of each driver applicant. The screening device is not intended to provide a thorough vision examination, but is only intended to determine, in as sufficient a manner as possible, which individuals have visual acuity that is satisfactory for a non-restricted license. A screening device that can be used by laymen is essential. Because

of the large number of persons that must be tested, it would be impractical to hire enough specilists to take enough time with each applicant for a complete eye examination. Nor is such an eye examination needed. The purpose is not to fit glasses or diagnose potential problems, but is rather simply to determine whether the applicant can see well enough to drive. Since the screening device is not intended to be a substitute for a professional eye examination, there is provision made later on in the rules for individuals who fail the screening test but are later found to meet minimum visual acuity requirements by a professional eye examination. With these purposes of the screening device in mind, it is apparent that in order for the screening device to fulfill its purpose, it must be able to screen 20/40 visual acuity, which is the cutoff point for a non-restrictive license. In addition, to insure that the screening device is technically adequate, the rules provide that it must be of a type that has been accepted by the American Medical Association. The Medical Association has sufficient technical expertise and knowledge to determine whether a screening device is satisfactory or not.

Under these proposed rules a person who scores 20/40 or better on a vision acuity test will satisfy the vision requirements for a non-restrictive license. The score of 20/40 may be with either one or both eyes. This has been the visual acuity standard used by the Department of Public Safety for many years. The experience with this standard of 20/40 over this period has indicated no unreasonable threat to the public safety from issuing driving permits to persons with 20/40 vision or better. Likewise, when the availability of restricted licenses is considered, the denial of a non-restricted permit to persons who have been unable to meet the visual acuity standard has not resulted in any unreasonable hardship to those persons who were able to qualify for a restricted license on the basis of their visual acuity. Therefore, the past experience of the Department of Public Safety with its visual acuity standard of 20/40 indicates that the standard is a reasonable

considering both the right of the general public to be assured that drivers on the road have adequate vision and, on the other hand, the concerns of particular individuals that they be allowed to drive. The 20/40 standard that has been in effect for all these years was not selected randomly. Rather, it was developed by reviewing standards of other jurisdictions, consultation with medical personnel, and also by evaluating past experience with drivers on Minnesota roads and highways.

The past experience of the Department of Public Safety with this visual acuity standard the only indication of its reasonableness. Before noticing these rules for hearing, the Department of Public Safety consulted with medical specialists and received their opinions that the proposed rule was a reasonable one. It should be noted, of course, that as is the case with almost every rule that picks a specific number, there are certainly arguments that can be made for having the number slightly higher or slightly lower. For example, someone might argue that the standard should be raised to 20/39 or lowered to 20/41. This type of argument, however, could be used regardless of what number was finally chosen. The Department believes that its selection of 20/40 as the visual acuity standard is a reasonable exercise of its administrative discretion in administering the driver's license statutes of the state of Minnesota. This proposed standard is also consistent with standards proposed by the United States Department of Transportation, National Highway Traffic Safety Administration, the United States Department of Health, Education and Welfare, Public Health Service, and the American Medical Association, all of which require visual acuity of at least 20/40 for a non-restricted driver's license for a person operating a private passenger vehicle. DOT at 38, HEW at 32, and Physician's Guide for Determining Driver Limitations, American Medical Association, Chicago, Illinois, (1973) at 6. (Hereinafter "AMA-2")

The Department of Public Safety does not, however, propose to make the 20/40 cutoff point a standard that would absolutely prohibit any person with worse vision from driving at all. Therefore, the Department of Public Safety has proposed that persons who have vision of from 20/70 to 20/50 be issued restricted driving licenses restricting the top rate of speed at which that person will be permitted to operate a motor vehicle. A speed restriction has a direct relationship to the visual acuity of a driver. This is because that as the speed of a vehicle increases, the distance that it takes a driver to react and stop the vehicle also increases. This increase is not arithmetical, but rather is exponential. Therefore, a person whose visual acuity is not very good is able to stop a motor vehicle safely after observing a hazard if that person is traveling at a lower rate of speed, whereas a person would not have been able to stop his or her vehicle safely if that person had been traveling at a higher rate of speed. The speed restrictions in the proposed rules are the same that have been used by the Department of Public Safety for many years. The Department of Public Safety's experience with them has shown these restrictions to provide a reasonable degree of safety for the general traveling public while at the same time allowing persons whose vision is not sufficient for higher speeds to enjoy the benefits of operating a motor vehicle. For many years, the Department of Public Safety has consulted with medical specialists about the safety and desirability of issuing such restricted licenses. These medical specialists have informed the Department that issuing licenses under the restrictions proposed in these proposed rules was a reasonable balancing of allowing persons with poor visual acuity to drive while at the same time providing reasonable safety for the general motoring public. The issuance of restricted licenses to persons with visual acuity between 20/40 and 20/70 is consistent with other recommendations that have been made. For example, the American Medical Association has said that persons wishing to drive with that type of visual acuity would have to be evaluated in regard to type of traffic

conditions and speeds. AMA-1 at 17. The U.S. DOT National Highway Traffic Safety Administration recommends the issuance of restricted licenses for persons with visual acuity worse than 20/50 but better than 20/80. DOT at 38.

Under the proposed rules, persons with vision from 20/80 to 20/100 would be evaluated on an individual basis. The AMA recommends that persons with visual acuity of less than 20/70 should not drive at all. AMA-1 at 17. The U.S. DOT National Highway Traffic Safety Administration recommends that persons with visual acuity of 20/80 or worse not be permitted to drive. DOT at 38. These two recommendations are consistent with the Department's proposed cutoff point at which a restricted license would not be routinely issued but would instead be a situation where each particular person would be evaluated to determine whether he or she posed an unreasonable safety risk. Although this would mean that in some instances persons would be issued restricted licenses when other authorities might recommend that no license be issued at all, the Department of Public Safety again has consulted on this policy with medical eye specialists and has received their opinions that licenses may be issued in certain situations to these types of individuals without causing an unreasonable safety hazard to the general public. In order to insure that licenses will be issued in these circumstances only with the strictest scrutiny, the rules provide that only the Chief Evaluator will determine whether a restricted license can be issued. Again, this is a standard that has been followed by the Department for years with reasonable safety for the public as well as providing driving privileges for those capable of driving safely with appropriate restrictions.

No license is available at all for persons with visual acuities of 20/100 or less or persons who are receiving assistance for the blind. Complete denial of licenses for these people is, of course, consistent with the recommendations cited earlier of the American Medical Association and the U.S. DOT National Highway Traffic Safety Administration. Again, past experience of the

Department and the recommendations of its medical specialists have indicated persons with 20/100 or less should not be driving.

One special comment might be appropriate in regard to the speed restrictions for people with visual acuity of 20/50. The rules provide a restriction of 55 m.p.h. for such a person. Although the current top speed limit in Minnesota is 55 m.p.h., this is not the speed limit that is established by statute. The top speed limit established by statute is 65 m.p.h. on all roads except freeways, where a top speed limit of 70 m.p.h. is established. The current 55 m.p.h. speed limit is established by executive order because of an energy shortage. If this order should be changed at some time in the future and the speed limit revert to the statutory speed limit, there would be no necessity to go back to hearing and amend these rules to insert the 55 m.p.h. speed limit for persons with visual acuity of 20/50. In addition, since the 55 m.p.h. limit is a restriction on their license, a restricted licensee who is convicted of exceeding 55 m.p.h. will have violated a condition of his license in addition to violating the speed law. If these violations of the license restrictions persisted, the Department might find it necessary to take action regarding the license that might not have been necessary if the speeding episodes had only been a violation of the speed laws.

These rules also provide that in addition to the speed restrictions a driver may also be restricted to roads having a maximum speed limit equal to the maximum speed limit imposed upon his or her license, if that restriction is necessary for safety purposes. This is a necessary and reasonable provision because, merely limiting the speed at which a driver drives his vehicle would not always be sufficient for safety. In addition, the nature of roads having higher speed limits may pose a hazard for such a driver. An example is freeway driving. The generally faster rates of travel and greater volumes of cars on freeways make it imperative that persons driving on them have adequate vision. Cars that are unable to blend with the general flow of traffic could cause an

undue hazard. Because of this, the rules provide that a person who has a restricted license with a maximum speed of 45 m.p.h. is also to be restricted from driving on a freeway. This is the only absolute restriction as to the type of road in the rules. Any other restrictions as to type of roads would be based upon an evaluation of the particular individual.

The rules also provide that a person who has a visual acuity of 20/50 or less may be restricted to driving within a specific area if that restriction is necessary for safety purposes. The ability to see and recognize things is, of course, the essence of visual acuity. Therefore, a person driving in a familiar area is less likely to be a safety hazard even if his or her visual acuity is not very good. In addition, restricting a driver to a certain area will still in most instances allow that driver to drive to fulfill most, if not all, of his or her social and necessary purposes for driving. Thus, restricting a driver to a particular area can result in an excellent balance between the desire of that individual to drive and the safety of the general public.

The Department of Public Safety has, for many years, imposed road-type and area restrictions on drivers with less than acceptable visual acuity. These restrictions have been imposed in consultation with medical specialists and have proven to be effective in granting these persons driving needs and in protecting the safety of the driver and the public in general. Prior to proposing these rules, the Department again consulted with medical specialists and was informed that restrictions as to the type of roads and as to the area were reasonable and effective restrictions for persons with poor visual acuity.

The rules contain several provisions specifying when corrective lenses are and are not required. Corrective lenses are not required when the applicant can pass the screening test without them. This only makes sense. If a person has adequate vision without the use of corrective lenses, there is no need to require that the driver wear them, unless the driver's doctor makes such a

recommendation. In such a case it would be reasonable to assume that the driver's doctor has made a professional determination that the driver needs corrective lenses in order to drive safely. The only other situation in which corrective lenses are not required is if an eye specialist recommends against their use. However, in these cases, the safety of the public is adequately protected by the imposition of any necessary restrictions upon that person's driving. A driver is required to wear corrective lenses when his visual acuity is less than 20/40 without the corrective lenses. Again, it only makes sense to require that if a person is to drive, that person should do all that he or she can to have vision that is sufficient to drive safely.

The rules provide that in several types of situations an applicant must submit a vision report from a physician. Three of those situations (cataracts, strabismus, and double vision) are medical conditions that the specialists whom the Department has consulted have recommended be checked by a doctor before issuing a license. Another situation where a doctor's report is required is where the driver examiner is unable to determine the extent of the applicant's vision. This inability could be due to several causes, including the failure of the applicant to cooperate fully in the screening test. Since the Department, in such a situation, would not know whether the applicant met the required visual acuity standards, it needs to know what the vision of the applicant is before it can issue him a license. The only viable alternative to the screening test is an examination by a doctor.

Another circumstance where a vision test by a doctor is required is if the applicant disagrees with the screening results. As it has been explained above, the screening test is not intended to be a full scale eye examination but is rather intended only as an expedient method for periodically reviewing the visual acuity of the large numbers of people applying for driver's licenses. Therefore, a person who fails the screening test is not necessarily precluded from obtaining a driver's license. However, before the Department

can safely give that person a driver's license, it must have adequate evidence of that person's visual acuity. Apart from the screening test, the only other adequate indication of the person's visual acuity would be a physician's report. Moreover, even if the doctor's examination shows that the applicant's vision is worse than 20/40, a doctor's examination is needed to determine what type of restricted license, if any, should be issued.

Courts and police officers often become aware that a particular person has driven in a fashion indicating that that person is unable to see what he or she would normally be expected to see. Examples might be running through plainly visible barricades at a construction site, or hitting a parked vehicle, in situations where other explanations, such as the use of alcohol, or mechanical failure, would not explain the accident. In these situations the safety of the public requires that the driver's vision be examined to determine what corrective measures, such as corrective lenses or restrictions on the driver's license, may be required.

III. Loss of Consciousness or Voluntary Control

This rule regulates the issuance of driver's licenses to persons who may be likely to lose consciousness or voluntary control while they are operating a motor vehicle. The essential purpose of this rule is to prevent situations in which a person behind the wheel of a motor vehicle loses consciousness or voluntary control and as a result has an accident. This rule nas no application to whether or not the driver is a good driver when conscious and in control of his or her vehicle. No person is a safe driver once he or she has lost consciousness or voluntary control, regardless of how safe a driver that person may have been while conscious. Motor vehicles whose drivers are not conscious and who are therefore unable to control them are inherently dangerous.

The Department has consulted with medical specialists in this field and has been informed that persons suffering from the conditions specified in Rule A are subject to losing consciousness or voluntary control while behind the wheel of a motor vehicle.

These medical specialists have also informed the Department that persons who have had warnings of seizures in the past or who have had only nocturnal attacks in the past are no less likely to have attacks without warning or during the daytime than are other persons suffering from the same disabilities.

Rule B requires a person to obtain a doctor's report if the Commissioner has good cause to believe that the person suffers from one of the conditions covered by these rules. Since a person with such a condition is a potential danger both to himself and others if he drives, it is reasonable to require him to obtain a report from his doctor specifying what his condition is and the date of his or her last period of unconsciousness. The rules allow the person all the reasonable time that he needs to obtain the report from his or her doctor. Therefore, it is reasonable to cancel the person's driving privileges if the report is not filed. Otherwise the Department could well be allowing a person with a dangerous condition to be operating a motor vehicle.

The main substantive requirement effecting persons with these conditions is that their driving privileges are cancelled if the individual has had more than one period of unconsciousness and has had at least one period of unconsciousness within the last twelve months. The person's driving privileges are reinstated after he or she has had a twelve month period free of any unconsciousness and a satisfactory doctor's statement. While it is not possible to predict with absolute accuracy which persons are going to become unconscious, the Department believes, and its past experience has confirmed this belief, that the longer it has been since a person has suffered from a period of unconsciousness, the less likely it is that person will suffer an additional period of unconsciousness. Again, after consulting with medical specialists, the Department was informed both in the past and shortly before these rules were proposed, that a person who has been free from periods of unconsciousness for a period of at least one year would not pose an unreasonable risk to safety on the highways. The Department's past

experience with licensing people with these conditions has also indicated that the one-year period is a reasonable balance between affording these individuals the opportunity to drive and providing safety for the public.

The American Medical Association would apparently recommend that persons with these types of conditions be free from a period of unconsciousness for at least two years before being permitted to drive, at least on a non-restricted license. AMA-1 at 22-23 and AMA-2 at 12-13. Also, many other jurisdictions allow only limited driving after a year of seizure-free history, and do not allow full unrestricted driving until the driver has been free of seizures for two years. AMA-2 at 12-13. The Department has, however, in reliance upon its consultation with medical experts, issued unrestricted licenses to these classifications of persons after they have been free from periods of unconsciousness for a period of one year. Past experience of the Department with this practice has not revealed that any unreasonable safety risk to the public has occurred.

Rule E requires the submission of medical reports from the driver at various frequencies. Frequency of the reporting is directly tied to the length of time since the last period of unconsciousness. The Department has consulted with medical specialists and has been informed that these periods of reports are necessary in order to provide a reasonable degree of safety to the motoring public by evaluating the person's current condition. The American Medical Association apparently recommends six-month medical reviews without the decreasing frequency proposed by these rules. However, the Department believes that its sliding scale of decreasing frequency of reports will provide sufficient safety to the motoring public. First, these requirements have, in essence, been in effect for many years and have proven to be effective in application during that period of time. Second, the medical specialists with which the Department has consulted have assured the Department that these reporting intervals provide a reasonable degree of safety to the motoring public.

The reason that the Department is requiring at least two periods of unconsciousness before cancelling the person's driving privileges is that it is very possible that one isolated period of unconsciousness would not be very indicative of any potential hazard. As is the case with the rest of these rules, this conclusion was reached after consulting with medical specialists in the field.

A specific comment is appropriate for Rule E.4, which provides that the privilege to drive will not be cancelled if the loss of consciousness results from a change or removal of medication on a doctor's orders. The reason for this provision is that it is reasonable to attribute the loss of consciousness to the change or withdrawal of the medication. Return of the patient to the status quo ante should reasonably be expected to bring his or her condition under the same control as it was prior to the change or removal of medication. This rule may also be necessary so that doctors will not be discouraged from prescribing changes in medication that they believe to be helpful to their patients.

The Department solicited input for these rules not only from medical specialists but also from the public at large. As a result of this soliciation, the Department has had extensive contacts with the Minnesota Epilepsy League.

IV. Diabetes

The uncontrolled diabetic is in no condition to drive any motor vehicle. AMA-1 at 6-7, AMA-2 at 3. Diabetes by itself causes an increased traffic-safety risk. Moreover, diabetes also affects other body organs in a manner which can make a diabetic's driving even riskier. Impact Study on Driving by Special Populations Volume 2, a Guide for the Evaluation of Handicapped Drivers, U.S. Department of Transportation National Highway Traffic Safety Administration, DOT HS-802 330 (April 1977) (hereinafter "DOT-2") at 50-51. Several factors can decrease the risk posed by diabetic drivers. Among these are a diabetic who controls his diabetes solely by means of his or her diet and the diabetic who

controls his or her diabetes with insulin but has an absence of a history of altered consciousness within the past year. DOT-2 at 51-52.

Because of these risks, if the Commissioner has good cause to believe that a person has diabetes, it is reasonable for the Commissioner to ask that person to supply a doctor's report that evaluates the effect of the person's condition on his or her ability to drive. If a review of the doctor's report indicates that the person cannot drive safely, that person would be an unreasonable risk to highway safety and should not drive until his or her condition has been satisfactorily corrected.

Since a layman driver examiner is not qualified to evaluate the seriousness of a person's diabetes, it is necessary to have a doctor's report setting forth the nature and extent of the diabetes in a particular person. Once the physician's statement is received the diabetic driver would fall into one of three general categories. The first category would be a diabetic who controls his or her diabetes solely by means of diet. Generally the diet-controlled diabetic probably does not present an increased traffic risk. DOT-2 at 51. Therefore, once it has been medically verified that the diabetics condition can be controlled by diet, there is not any further need for follow-up medical reports.

The second general category would be a person whose doctor has certified him or her as satisfactorily controlling diabetes with the use of insulin and as posing no safety risk because of diabetes. Generally, the diabetic who controls the disease with the use of insulin is a reasonable safety risk if there is an absence of a history of altered consciousness or loss of voluntary control within the past year. DOT at 52. Therefore, when a driver uses insulin to control the diabetes it is necessary to know if and when that person has an episode of altered consciousness or loss of voluntary control. The Department of Public Safety has consulted with medical specialists in the field and these specialists have recommended that a driver using insulin to control his or her diabetes file a

periodic physician's report. The frequency recommended by these medical specialists is the frequency of reporting specified in Rule B. These specialists have specifically advised the Department that there is no undue safety risk in requiring less frequent reports when the diabetic driver using insulin has gone for the periods of years indicated in Rule B without any loss of voluntary control of episode of altered consciousness.

The proposed rules by the Department of Public Safety represent, in essence, the standards followed by the Department of Public Safety over the period of many years. It has been the experience of the Department of Public Safety that no unreasonable risk to the public has resulted in following these standards. It has further been the experience of the Department that the use of these standards has afforded diabetic drivers the opportunity to operate motor vehicles with a minimum being required in the way of reporting or restrictions on driving.

V. Mental Illness or Deficiency

The regulation of this type of handicap involves different considerations than the regulation of the types of handicaps involved in the preceding sections. Persons who operate motor vehicles when they cannot see where they are going and persons operating motor vehicles while they are unconscious are obviously causing a hazard. In the case of mental illness or deficiency, however, the mental illness or deficiency does not necessarily lead to effects as clear-cut as poor vision or unconsciousness. Some types of mental illness or deficiency have no relation to whether a person can operate a motor vehicle safely or not. Therefore, while the presence of epilepsy, for example, always raises the possibility of a person becoming unconscious and therefore unfit to drive, the presence of a mental illness per se does not necessarily indicate that conditions are present that may cause the person to operate a motor vehicle in an unsafe manner. It is true that if the motoring public were to be absolutely assured of the fitness to drive of someone who has a mental illness or disease, it would be necessary

to have everyone with these conditions submit a physician's report indicating whether or not they are fit to drive. However, an agency is not limited to regulating an entire problem or doing nothing at all. It is permissible for an agency to deal with only portions of a potential problem. In this case, the Department of Public Safety has determined after counsulting with medical specialists and with the Mental Health Association of Minnesota that reasonable safety to the motoring public can be achieved by requiring physician's reports only when the Commissioner has both good cause to believe that a person is mentally ill or deficient and that the mental illness or deficiency would adversely affect the person's ability to operate a motor vehicle. The Agency believes that at this point a broader regulation would not be a prudent use of its resources to attempt to police persons with mental illneses if there is no indication that these mental illnesses have any connection with the ability to drive. In addition, such a narrower regulation will avoid the possibility that persons whose mental illnesses or deficiencies are not connected with their ability to drive would have needlessly to obtain physician's reports on their conditions. There are, however, persons with mental illnesses or deficiencies of a type that should be carefully evaluated before allowing them to drive. AMA-2 at 14-15. HEW at 20 and DOT-2 at 54-55. Therefore, it is necessary for the Department to have this rule dealing with those persons who have mental illnesses or deficiencies. Consultations between the Department and medical specialists and the Mental Health Association have determined that it will be reasonable and effective to require physician's reports only from those persons whose mental illnesses or disorders are connected with their ability to drive. The drafting of this proposed rule was carried out with the extensive consultation with the Mental Health Association of Minnesota, which concurs in the conclusion that the proposed rule is necessary and reasonable. The knowledge and expertise of the Mental Health Association was given great weight by the Department in the development of this rule.

VI. Miscellaneous Physical or Mental Conditions

This rule requires a person to submit a physician's report if the Commissioner has good cause to believe that any one of a number of enumerated situations exist and that the situation would adversely affect the person's ability to drive safely. If the Commissioner reviews the doctor's report and finds that the person cannot drive safely, then all driving privileges are to be cancelled. It is axiomatic that a person who cannot drive safely should not be allowed to drive. It would also appear to be axiomatic that a person who has a condition that raises reasonable doubts about their ability to drive safely should submit evidence of their ability to drive safely. Certain medications can, of course, affect a driver's ability to perceive, to reason, to react, and to control the vehicle. AMA-2 at 19-20. Certain diseases can also cause similar problems. AMA-1 at 6-8. The use of excessive alcohol or controlled substances is probably the most severe single disability regarding the unsafe operation of a motor vehicle. Persons who faint and blackout are by definition not being able to operate a vehicle safely while they are in such conditions. Fatigue and related conditions are responsible for many accidents. AMA-1 at 10. Persons who have such a lack of physical endurance that they are unable to drive without experiencing unreasonable and unsafe fatigue clearly pose a hazard to highway safety. The same considerations would apply to the other factors listed in Rule B-5. Cerebral Palsy, Multiple Schlerosis, and Parkinson's Disease also can create situations that may make it unsafe for a person to drive. DOT-2 at 54-57, 74-77, and 97-99.

Rules C and D cover conditions that do not require a physician's report, but rather require the person to take a driver's examination. All of these conditions can be readily evaluated during a behind-the-wheel examination. A person must be in a condition so that he or she can use safe driving procedures. The motoring public must be protected from those who, for example, drive on the wrong side of the road or fail to stop for or observe traffic

signals and signs. In addition, a person who cannot adequately and safely judge space, time and motion will be unable, for example, to know when it is safe to enter traffic or when he must decrease speed or stop the vehicle. A person who does not have the physical strength to operate a vehicle's controls cannot, by definition, be in control of a vehicle. An out-of-control vehicle represents an urgent danger to everyone else on and off the public roads. Likewise, a person whose physical condition is such that they are not able to operate a vehicle in a safe manner cannot be allowed to drive. Whether or not a person's driving privileges are cancelled under Rules C and D would, of course, have to be decided in each individual case. The bottom line will be whether the person passes or fails the behind-the-wheel test.

VII. Physician's Reports

Minn. Stat. § 171.13, subd. 3 (1980) allows the Department of Public Safety to require a person to submit to an examination by a person designated by the Department to determine incompetency, physical or mental disability or disease, or anyother condition which might affect the driver in exercising reasonable and ordinary control over a motor vehicle. These rules provide certain instances in which the Department of Public Safety will require a person to have examinations made and reports supplied by doctors of their own choice. There is, of course, a great difference between requiring someone to provide information from a doctor and restricting or eliminating that person's privilege to drive. The medical reports required by these rules are required only in situations when the Commissioner has good cause to believe that a specified condition exists that may cause the person to be an unsafe driver. For example, if the Commissioner learns that a person has epilepsy, the Commissioner knows from experience, from the literature and from medical experts with whom he has consulted that a person whose epilepsy is not sufficiently controlled poses an unnecessary reisk as a driver. (Epilepsy is used only as an example. These comments apply equally well to diabetes, and other conditions that have been

discussed above.) The Commissioner and his driver's license examiners are not medical specialists in all the numerous fields that are related to these proposed rules. They are unable to make a professional judgment regarding the person's medical condition. Therefore, when the Commissioner believes that a person has one of the conditions under these rules, it is necessary for him to require that person to supply a medical report. Any inconvenience to the person in obtaining the medical report is certainly outweighed by the necessity to insure both his and the public's safety to as great an extent as possible. Moreover, the medical specialists consulted by the Department of Public Safety have indicated that in most, if not all, situations covered by these rules, a person should be seeing his doctor on at least as frequent a basis as would be required by these rules.

The rules provide that the person be given a reasonable opportunity to obtain his doctor's report. If the report is not supplied then the driving privileges will be cancelled until a satisfactory report is supplied showing that the person can drive safely. This is, of course, similar to the practice in the entire driver's license regulation field. The Commissioner does not affirmatively force people to take examinations and does not have the staff to coerce any unwilling persons. However, the sanction of removal of driving privileges is an effective measure, both because most people will comply when faced with the denial of their driver's license and because those who do not will not be driving anyway and will therefore not pose any hazard to the motoring public.

VIII. Other Restricted Licenses

This proposed rule gives a person who is unable to pass the driving test an opportunity to drive under restricted circumstances if he really needs to drive. The safety of the public is reasonably protected by having the applicant be evaluated by a supervisor examiner and by having his examination reviewed by the Chief Driver Examiner and the Chief Driver Evaluator. Since one person will be responsible for all of these types of licenses,

namely the Chief Driver Evaluator, that person will be in a position to know under what types of situations such an arrangement is likely to succeed. The public is further protected because any violation of the driving restrictions results in the cancellation of the person's driving privileges. The Department has had a program of restricted licenses essentially identical to that proposed under this rule, and it has been the Department's experience that it has provided a reasonable degree of safety to the motoring public while allowing individuals with a genuine need to drive to be able to do so.

IX. Medical Review Board

As is the case with most general rules, there may be individual cases where it would be appropriate to grant a variance from the general rule. This rule provides the procedure to be followed by a person who believes he or she should be granted a variance from these rules. The rule provides that the applicant for a variance must do so in writing and must provide the Commissioner with a complete medical history plus good medical reasons for granting the variance. The application for a variance should, of course, be in writing so that it is clear what variance is being requested and the basis on which it is being requested. Since the questions raised by a variance will involve essentially medical questions, it is reasonable for the Commissioner to obtain the advice of the appropriate Medical Review Board before making his decision. The responsibility for making the decision, of course, remains with the Commissioner himself. It is the responsibility of the Commissioner to make the final decision. In the past, the Commissioner has always followed the Board's recommendations and in such cases the reason for his decision would be that he considered the conclusion of the Board to be valid. However, it is conceivable that his decision will differ from the recommendation of the Board. However, in such a case, he is required to tell the applicant of the reasons for his decision.

Statutory Citations:

Minn. Stat. Ch. 171 (1980), including Minn. Stat. §§ 171.04, 171.09, 171.13 and 171.14.

Documentary Evidence:

1. American Medical Association: Medical Guide for Physicians in Determining Fitness to Drive a Motor Vehicle. (From AMA Journal, 3-14-59, vol. 169 at 1195-1207.)
2. American Medical Association: Physician's Guide for Determining Driver Limitation. (AMA, Chicago, Illinois, 1973: MI-210-3346-1150: 10M: 418-j:9/73.
3. Florida's Medical Guidelines (1977)
4. United States Dept. of HEW, Public Health Service Publication No. 1996: Driver Licensing Guidelines for Medical Advisory Boards (1969).
5. United States DOT, NHTSA, U.S. Gov't. Document No. 050-003-00348-4: Functional Aspects of Driver Impairment (1980).
6. United States DOT, NHTSA, Document No. DOT HS-802 330 Impact Study on Driving by Special Populations, Vol. 11 - A Guide for the Evaluation of Handicapped Drivers (1977).
7. United States DOT, NHTSA, U.S. Gov't. Document No. 050-003-00252-6: The Role of Medical Advisory Boards in Driver Licensing (1977).
8. United States DOT, Fed. Highway Administration, The Insulin - Dependent Driver (April 16, 1980).

Letters from Doctors:

1. Richard O. Leavenworth, Jr., M.D.
2. E. M. Hammes, Jr., M.D.
3. D. B. Etzweiler, M.D.

5/4/81

JOHN P. SOPSIC
Commissioner of Public Safety