

MINNESOTA DEPARTMENT OF PUBLIC SAFETY



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Driver and Vehicle Services

445 Minnesota Street • Saint Paul, Minnesota 55101-5195
Phone: 651.296.6911 • Fax: 651.797.1120 • TTY: 651.282.6555
www.dps.state.mn.us

July 27, 2010

Legislative Reference Library
645 State Office Building
100 Rev. Martin Luther King, Jr. Blvd.
Saint Paul, MN 55155

**RE: In the Matter of the Proposed Rule Amendment of the State
Department of Public Safety Governing Cancellation/Denial of
Driving Privileges for Loss of Consciousness or Voluntary Control.**

Dear Librarian:

The Minnesota Department of Public Safety intends to adopt a rule amendment governing cancellation/denial of driving privileges for loss of consciousness or voluntary control. We plan to publish a Dual Notice in the August 2, 2010 *State Register*.

The Department has prepared a Statement of Need and Reasonableness. As required by Minnesota Statutes, sections 14.131 and 14.23, the Department is sending the Library a copy of the Statement of Need and Reasonableness at the time we are mailing our Notice of Intent to Adopt Rules.

If you have any questions, please contact me at 651-201-7583.

Sincerely,

A handwritten signature in blue ink, appearing to read "Jacqueline Cavanagh".

Jacqueline Cavanagh
Legislation and Rules Coordinator
Driver and Vehicle Services

Enclosure: Statement of Need and Reasonableness

Minnesota Department of Public Safety



STATEMENT OF NEED AND REASONABLENESS

Proposed Amendment to Rule Governing Cancellation/Denial of Driving Privileges for Loss of Consciousness or Voluntary Control, Minnesota Rules, Part 7410.2500

July 27, 2010

NOTICE: Upon request, the department can provide this Statement of Need and Reasonableness in an alternative format such as large print, Braille, or cassette tape. Requests should be directed to Jacqueline Cavanagh at the Minnesota Department of Public Safety, Driver and Vehicle Services, 445 Minnesota Street, Suite 195, Saint Paul, Minnesota 55101-5195; 651-201-7583 (telephone); DVS.Rules@state.mn.us (e-mail). TTY users may call the department at 651-282-6555.

INTRODUCTION

Pursuant to chapter 171 of Minnesota Statutes, the Minnesota Department of Public Safety (DPS), through its Driver and Vehicle Services Division, regulates the licensure and driving privileges of individuals who operate vehicles on Minnesota roads. In this rulemaking proceeding, DPS proposes to amend a rule regarding the cancellation or denial of driving privileges¹ for individuals who have suffered a periodic or episodic loss of consciousness or voluntary control. The rule at issue is Minnesota Rules, part 7410.2500, subpart 3. Under the proposed amendment, individuals could seek reinstatement of their driving privileges after three months, instead of the six months required under the existing rule.

Context and Purpose

Approximately 3.9 million individuals hold Minnesota driver's licenses issued by DPS. In 2008, DPS withdrew driving privileges from 219,000 individuals for reasons ranging from driving while impaired to failing to produce proof of insurance. Of these withdrawals, the department estimates that approximately 300 relate to the subject of the proposed rule, a driver's periodic or episodic loss of consciousness or voluntary control.

Part 7410.2500 defines "loss of consciousness or voluntary control" as the "inability to assume and retain upright posture without support or [the] inability to respond rationally to external stimuli." Minn. R. 7410.2500, subp. 1a. Such an episode can be caused by myriad physical conditions – including epileptic syndromes, vasovagal syncope, drug withdrawal, and meningitis – with a wide range of prognoses for reoccurrence. The rule requires an individual to report any episode of loss of consciousness or voluntary control to DPS when he or she applies for a driver's license or, if s/he is already a licensed driver, within 30 days of the episode.² The report must be accompanied by a physician's statement. *See id.* subp. 2.

Under the current version of subpart 3, if the Commissioner of Public Safety has good cause to believe that a driver or applicant has experienced an episode, or if a physician indicates an unfavorable prognosis for controlling the person's condition, the commissioner must cancel or deny driving privileges for six months from the date of the episode or diagnosis, subject to several exceptions.³ The commissioner may not reinstate driving

¹ The term "cancellation" applies with respect to individuals who already hold a driver's license, while "denial" pertains to individuals who have applied for a driver's license or permit. As used in this document, the term "withdrawal" encompasses both cancellation and denial of driving privileges.

² If an individual fails to report such an episode, DPS will cancel or deny driving privileges for six months to one year, depending upon the circumstances. *See* Minn. R. 7410.2500, subp. 2a. Minnesota law also allows a physician to make a report to DPS if s/he has "diagnose[d] a physical or mental condition which in the physician's judgment will significantly impair the person's to operate safely a motor vehicle." Minn. Stat. § 171.131, subd. 1 (2009).

³ The exceptions to the rule are enumerated in items A to D of subpart 3. Summarized broadly, the first three items provide that driving privileges will not be withdrawn if a physician opines that another episode

privileges until a physician avers that there is a favorable prognosis for episode-free control of the medical condition, that the person is compliant with treatment, and that s/he is medically qualified to operate a motor vehicle safely.

Subpart 3 is not intended to be punitive; rather, it is meant to ensure, to the extent possible, that motor vehicles are operated on Minnesota roads only by drivers who can maintain control over them. Simply put, **the purpose of this rule is to protect the public while restricting driving privileges no more than will typically be medically necessary.**

Subpart 3 was last amended in 1988, when the mandatory minimum withdrawal period was reduced from one year to six months. The amendment currently under consideration would further reduce the mandatory minimum from six to three months. The change was suggested by the Epilepsy Foundation of Minnesota, which produced letters of support for the amendment from neurologists and other interested parties.

DPS has solicited advice from its medical review board – the body charged with reviewing requests for variances from this rule – and its members have expressed support for the proposed change.⁴ The department also has surveyed recent scientific literature on the issue. The department’s deliberative process is described in greater detail below in the section entitled “Rule Analysis,” beginning on page 13. At this time, DPS believes that a three-month minimum withdrawal period would strike a reasonable balance between the needs of affected drivers and the interests of the general public and that it would be consistent with current medical knowledge.

Process

On November 24, 2008, DPS published a Request for Comments on the proposed rulemaking in the *State Register* and posted a copy of the Request on the department’s Driver and Vehicle Services website (<http://www.dps.state.mn.us/dvs/PublicNotices.htm>). The Request described the proposed rule amendment, the persons affected by the proposed rule, and the statutory authority for the rulemaking.

Copies of the Request for Comments were mailed to persons who have requested to be notified of DPS’ rulemaking pursuant to Minnesota Statutes, section 14.14. In accordance with that statute, the department also attempted to identify and notify those persons or classes of persons who would be significantly affected by the proposed rule. DPS’ efforts in this regard are described in the next subsection, entitled “Additional Notice.”

is unlikely to occur. The fourth item provides for a one-year cancellation/denial period if the episode was a repeat occurrence and resulted from the abuse of alcohol or a controlled substance.

⁴ Both members of the DPS medical review board expressed support for the proposed rule amendment when work on this rulemaking first began in 2008.

To date (7/26/10), Driver and Vehicle Services (DVS) has received 21 comments and nine requests for information from individual citizens and representatives of entities. One citizen urged DVS to consult its medical review board concerning the matter (which it already had done), and this writer requested and received additional information regarding the scope of the possible rule amendment. Another citizen, who suffered a seizure due to an operable brain tumor, wrote in favor of the possible change. A couple whose son has a seizure disorder expressed their support for the amendment. They noted the particular hardships faced by individuals in rural areas of the state when driving privileges are withdrawn. An individual, disclosing a diabetes condition, wrote in favor of the proposed change stating that consequences of this medical condition (which can lead to loss of consciousness as a result of a diabetic coma) should not be treated more harshly than a DWI violation. This comment seems to suggest that the stigma and ramifications of cancelled driving privileges due to a medical condition beyond one's control are too closely paralleled to those associated with the willful and criminal act of driving while intoxicated.

Nine letters and one e-mail came from fourteen physicians, all of whom expressed unequivocal support for the possible rule amendment. Many of them cited scientific literature in support of the rule change. Of the 21 comments received, one was from a mental health practitioner who provides services to people with epilepsy. This individual wrote in favor of the possible rule change.

Three citizens expressed opposition to the proposed rule amendment. One of them, in essence, was protesting the fact that his driving privileges had been withdrawn, apparently for some reason other than a loss of consciousness or voluntary control. Another citizen, who identified herself as a former police officer, described the proposed rule change as "irresponsible" because of the potential impact on public safety. A woman identifying herself as a mother of three children expressed concern that the department would be "rescinding" this rule. Lastly, an employee of the Isanti Fire District wrote in to express opposition to the proposed rule amendment. He stated that the loss of lives outweighs the "gamble of having someone behind the wheel who has a history of not maintaining physical clarity."

Finally, a citizen inquired about submitting comments and stated that her experience of having a controlled seizure disorder may help others, but did not indicate a position on the proposed rule amendment.

In the August 2, 2010 issue of the *State Register*, the department plans to publish a Dual Notice of Intent to Adopt Rules Without a Public Hearing Unless 25 or More Persons Request a Hearing And Notice of Hearing If 25 or More Requests For Hearing Are Received. The Dual Notice and the proposed rule will be sent by U.S. or electronic mail to the individuals and entities who received the Request for Comments and to the individuals and entities described in the next subsection, entitled "Additional Notice." The Dual Notice, the proposed rule, and this Statement of Need and Reasonableness (SONAR) also will be posted for public review on DPS' Driver and Vehicle Services website

(<http://www.dps.state.mn.us/dvs/PublicNotices>), and copies of all three documents will be sent to legislators as required by Minnesota Statutes, section 14.116. A copy of this SONAR will be sent to the Legislative Reference Library as required by Minnesota Statutes, section 14.131.

Additional Notice

In accordance with Minnesota Statutes, section 14.14, DPS strove to identify those persons or classes of persons who would be significantly affected by the proposed rule, so that they could be notified of these rulemaking proceedings. As explained above, the proposed rule primarily affects two groups: (1) drivers and would-be drivers who have experienced, or who will in the future experience, periodic or episodic losses of consciousness or voluntary control (“cancelees”); and (2) the general public.

With respect to the first group, DPS concluded that there was no means of identifying individuals who might be subject to the proposed rule’s provisions because of future losses of consciousness or voluntary control. Because of data privacy concerns and the sensitive medical issues that may be involved, the department also decided against notifying individuals whose driving privileges already have been withdrawn under the current rule. DPS chose instead to try to reach those individuals through advocacy organizations such as the Epilepsy Foundation of Minnesota and through medical associations such as the Minnesota Society of Neurologic Sciences.

In its effort to reach both cancelees and the general public, DPS mailed copies of the Request for Comments to: 33 individuals and organizations that had advocated for the rule amendment; to six individuals affiliated with five medical societies; to four organizations involved in motorist, transportation, and/or traffic safety issues; to three law enforcement organizations; and to two entities that provide services to drivers with disabilities. In addition to the mailed notices, the department published the Request for Comments on the Driver and Vehicle Services website, <http://www.dps.state.mn.us/dvs/PublicNotices.htm>.

In anticipation of publishing the Dual Notice, DPS updated the list used for the Request for Comments. Two individuals were deleted from the list because they had moved and no forwarding addresses were provided, and an insurance industry group and a sixth medical society were identified and added to the list. DPS also added 21 individuals and entities that were not on the original mailing list but who responded to the Request for Comments with comments or requests for more information. DPS then submitted this additional notice plan to the Office of Administrative Hearings for review.

On July 15, 2010, the Office of Administrative Hearings approved the Additional Notice Plan submitted by DPS on July 8, 2010. The approval was contingent upon the addition of seven organizations to the mailing list. These included five medical associations, one legal organization, and one advocacy/support organization.

STATUTORY AUTHORITY

The department's authority to adopt the rule is set forth in several statutes. The first of these provides in pertinent part:

The department shall not issue a driver's license . . . to any person when, in the opinion of the commissioner [of public safety], the person is afflicted with or suffering from a physical or mental disability or disease that will affect the person in a manner as to prevent the person from exercising reasonable and ordinary control over a motor vehicle while operating it upon the highways.

Minn. Stat. § 171.04, subd. 1(11) (2009). Section 171.14 further authorizes the commissioner to "cancel any driver's license upon determination that . . . the person, at the time of the cancellation, would not have been entitled to receive a license under section 171.04." Minn. Stat. § 171.14(a) (2009).

Additional authority for this rulemaking is set forth in the driving restrictions statute, which states: "The commissioner, when good cause appears, may impose restrictions suitable to the licensee's driving ability or other restrictions applicable to the licensee as the commissioner may determine to be appropriate to assure the safe operation of a motor vehicle by the licensee." Minn. Stat. § 171.09, subd. 1(a) (2009). Moreover, section 171.13 provides:

The commissioner may require an examination by such agency as the commissioner directs of any licensed driver, to determine incompetency, physical or mental disability or disease, or any other condition which might affect the driver from exercising reasonable and ordinary control over a motor vehicle If as a result of the examination the commissioner believes that the driver is an unsafe person to operate a motor vehicle upon the public highways, the commissioner may cancel the driver's license of the person.

Minn. Stat. § 171.13, subd. 3 (2009).

Viewed as a whole, this statutory scheme confers upon the department the requisite authority to adopt the proposed rule.

REGULATORY ANALYSIS

Under Minnesota Statutes, sections 14.002, 14.111, 14.127, 14.128, and 14.131, the department must weigh certain factors in determining the need for and reasonableness of the proposed rule amendment. Each factor is addressed in turn here.

1. Persons Affected (Minn. Stat. § 14.131(1))

The department has identified “classes of persons who probably will be affected by the proposed rule, including classes that will bear the costs of the proposed rule and classes that will benefit from the proposed rule.” Minn. Stat. § 14.131(1) (2009). Two main classes of persons likely would be affected by the proposed amendment. The first is comprised of “cancelees” – i.e., drivers and would-be drivers who have experienced, or who will in the future experience, a periodic or episodic loss of consciousness or voluntary control, and whose driving privileges might be subject to cancellation or denial under the proposed rule. The second can be described as “the general public,” comprised of all individuals who share Minnesota roads with cancellees.

The rule itself does not directly impose costs upon either class. However, the proposed amendment presumably would benefit cancellees, by lessening the rule’s economic impact upon them. Withdrawal of a person’s driving privileges can negatively affect the person’s ability to work, to participate in society, and to live independently, particularly if the person lives in an area that is inadequately served or is not served by public transportation. Allowing such a person to seek reinstatement after three months, rather than six months, should reduce the rule’s burden upon him or her. This may also benefit the general public, to the extent that cancellees might be less likely to require public assistance if their driving privileges are withdrawn for shorter periods of time.

The general public benefits from this and other rules aimed at keeping unsafe drivers off of Minnesota’s roads, because members of the general public presumably are at lower risk of injury, death, and property loss from motor vehicle crashes when such drivers’ privileges are withdrawn. Under the proposed amendment, cancellees still would have to provide a physician’s statement indicating their fitness to drive before the department would reinstate driving privileges. The department believes this requirement is sufficient to ensure public safety and thus, the department believes that the proposed rule amendment would have no measurable effect – or, at least, no predictable effect – upon the general public in terms of cost.

2. Probable Costs/Effect on State Revenues (Minn. Stat. § 14.131(2))

Neither the department nor any other agency is likely to incur additional implementation or enforcement costs if the proposed rule is adopted. The department would give notice of any new rule to those whose driving privileges have been withdrawn in the months preceding the rule’s adoption, and it might experience a brief upsurge in requests

for reinstatement from those individuals. However, the department expects to be able to handle the notification and the temporary increase in volume without adjusting staffing levels and without incurring extraordinary costs.

The proposed rule would have no effect on state revenues, because no tax or fee is associated with it.

3. Less Costly or Intrusive Methods (Minn. Stat. § 14.131(3))

The department has considered whether there are less costly or less intrusive methods for achieving the purpose of the proposed rule. *See* Minn. Stat. § 141.131(3) (2009). For the reasons that follow, the department has concluded that there are no such methods.

The department necessarily incurs expenses any time it withdraws an individual's driving privileges. The department must review the record and notify the driver or applicant of the withdrawal decision, and it must evaluate his or her subsequent requests for reinstatement. Those expenses would in essence be the same whether the withdrawal period were one month or one year. The only less costly option would be to forego cancellation/denial altogether; however, that would violate statute and defeat the purpose of the proposed rule – i.e., to protect the general public from drivers who cannot maintain control over their motor vehicles.

The proposed rule is less intrusive than the existing rule, since it would allow earlier reinstatement of driving privileges for those whose medical conditions are brought swiftly under control. Although a withdrawal period of fewer than three months arguably would be even less intrusive than that proposed, the department believes a shorter withdrawal period would undermine the rule's fundamental purpose of protecting public safety. The department's reasoning on this point is discussed in greater detail below in the "Rule Analysis" section beginning on page 13.

4. Alternative Methods Considered (Minn. Stat. § 14.131(4))

The Minnesota Administrative Procedure Act requires DPS to describe any alternative methods that it seriously considered for achieving the purpose of the proposed rule and the reasons why those alternatives were rejected. *See* Minn. Stat. § 14.131(4) (2009). In DPS' view, however, there is no alternative method of achieving the rule's purpose, a purpose that is mandated by statute.

The legislature has directed the commissioner to withdraw driving privileges from any person whose medical condition prevents him or her from exercising reasonable and ordinary control over a motor vehicle. *See* Minn. Stat. §§ 171.04, subd. 1(11), 171.13, subd. 3, 171.14(a) (2009). Drivers and applicants need to know, in relatively concrete terms, why their driving privileges may be withdrawn and under what circumstances those privileges

may be reinstated. This rule articulates those standards and assures cancellees that they are being treated in the same manner as other, similarly situated drivers.

This rulemaking is limited in scope to determining the specific, minimum length of time a person's driving privileges should be withdrawn if s/he has experienced a periodic or episodic loss of consciousness or voluntary control. The department has considered the options of retaining the current withdrawal period of six months, or whether shorter or longer withdrawal periods would better serve the public interest. This process is described below in the section titled "Rule Analysis," which begins on page 13. Based on the information available to it to date, DPS has concluded that a three-month minimum withdrawal period is the most reasonable option.

5. Probable Costs of Compliance (Minn. Stat. § 14.131(5))

The department has analyzed "the probable costs of complying with the proposed rule, including the portion of the total costs that will be borne by identifiable categories of affected parties, such as separate classes of governmental units, businesses, or individuals," Minn. Stat. § 14.131(5) (2009), and it has concluded that the proposed amendment has no effect on the costs of compliance.

Only individuals who have experienced periodic or episodic losses of consciousness or voluntary control would incur any costs in complying with the proposed rule. These individuals must do two things to comply with the existing and proposed rules: report an episode to DPS, which costs the individuals nothing; and submit a physician's report to DPS both initially (when reporting an episode) and subsequently (when applying for reinstatement of driving privileges).

DPS recognizes that a cancellee may incur some expense, such as an insurance co-pay, when consulting with a physician. However, that is the only direct cost associated with compliance, and the same cost is associated with compliance under the existing rule as well. Whether the physician consultation occurs at the end of a six-month, or three-month, period is immaterial in terms of cost. Moreover, the resultant physician's report is essential to the commissioner's decision to reinstate or to continue withdrawal of an individual's driving privileges. Thus, this cost of compliance continues to be both needed and reasonable.

6. Probable Costs or Consequences of Non-Adoption (Minn. Stat. § 14.131(6))

Under the Administrative Procedure Act, DPS must consider "the probable costs or consequences of not adopting the proposed rule, including those costs or consequences borne by identifiable categories of affected parties, such as separate classes of government units, businesses, or individuals." Minn. Stat. § 14.131(6) (2009). Upon weighing these costs and consequences, the department has concluded that adoption of the proposed rule is nevertheless warranted.

As noted above, DPS recognizes that the withdrawal of driving privileges can have a negative effect on the psychosocial and economic wellbeing of cancellees. Anecdotal evidence suggests that for many individuals, the current six-month mandatory cancellation period is longer than is medically necessary, and the literature largely supports this point of view. By failing to amend the rule, DPS would be continuing a policy that appears to have unintended and unnecessary negative effects. This issue is discussed in greater detail on page 13 in the section titled “Rule Analysis.”

7. Comparison with Existing Federal Regulations (Minn. Stat. § 14.131(7))

Under section 14.131, clause 7, of Minnesota Statutes, DPS must assess any differences between the proposed rule and existing federal regulations and specifically analyze the need for and reasonableness of each difference. The department has reviewed federal regulation in this area and has concluded that the proposed rule is necessary and reasonable.

Generally deemed to be an exercise of the police power, the regulation of drivers is a matter mostly left to the states. Federal regulation in this area pertains only to the operation of commercial motor vehicles (CMVs) because of their impact on interstate commerce. *See, e.g.*, 49 C.F.R. § 391.41 (2008) (disqualifying a person from driving a CMV if s/he has a history or diagnosis of any condition “which is likely to cause loss of consciousness or any loss of ability to control a commercial motor vehicle”). A person might be disqualified from operating a CMV under the federal regulations, but that does not affect his or her state-granted privilege to drive any motor vehicle other than a CMV.

The proposed rule pertains more broadly to the privilege to operate any type of motor vehicle, whether for commercial or noncommercial purposes. Because the operator of any motor vehicle can pose a threat to public safety if s/he is unable to maintain control of the vehicle, federal regulation alone is insufficient. The proposed rule is both needed and reasonable under the circumstances.

8. Impact on Farming Operations (Minn. Stat. § 14.111)

The proposed rule would have no known impact on farming operations. Accordingly, DPS has not notified the Commissioner of Agriculture of this rulemaking.

9. Performance-Based Regulation (Minn. Stat. §§ 14.002, 14.131)

Section 14.002 of Minnesota Statutes requires agencies to “develop rules . . . that emphasize superior achievement in meeting the agency’s regulatory objectives” while striving toward “maximum flexibility for the regulated party and the agency in meeting those goals.” Minn. Stat. § 14.002 (2009). The proposed rule amendment meets this standard.

DPS' primary regulatory objective is to ensure public safety. By continuing to require a physician's statement certifying that the individual is able to control a motor vehicle before it reinstates driving privileges, DPS will continue to meet this objective. Furthermore, the proposed amendment would neither increase costs nor decrease the effectiveness of the rule. Rather, the proposed rule would increase flexibility for cancellées by allowing them to seek restoration of their driving privileges at the end of three months, rather than six, if their medical conditions allow.

10. Compliance Costs for Small Business or City (Minn. Stat. § 14.127)

DPS has considered whether the cost of complying with the proposed rule in the first year following adoption will exceed \$25,000 for any business with fewer than 50 full-time employees or for any city with fewer than ten full-time employees. *See* Minn. Stat. § 14.127, subs. 1-2 (2009). The department has based its determination on the regulatory analysis in the section above (page 9) titled "Probable Costs of Compliance." As discussed there, only individuals who experience losses of consciousness or voluntary control conceivably could directly incur costs in complying with the proposed rule; therefore, DPS has concluded that neither small businesses nor cities will incur any compliance costs.

11. Consultation on Local Government Impact (Minn. Stat. § 14.131)

DPS has consulted with the commissioner of management and budget to evaluate the fiscal impact and benefits of the proposed rule on local governments. On May 14, 2010, prior to publishing the Notice of Intent to Adopt Rules, the department submitted copies of:

- (1) the governor's Proposed Rule and SONAR Form;
- (2) the proposed rule; and
- (3) the May 2010 draft of this Statement of Need and Reasonableness.

On May 18, 2010, Keith Bogut responded on behalf of the commissioner of management and budget. He opined that since the proposed rule change applies only to individuals and shortens the minimum time of driving suspension that the proposed rule change will not impose a cost on local governments.

12. Necessity for Local Implementation (Minn. Stat. § 14.128)

DPS has determined that no town, county, or home rule charter or statutory city will be required to adopt or amend an ordinance or other regulation to comply with the proposed rule. As discussed above, only individuals who experience losses of consciousness or voluntary control must take steps to comply with the proposed rule.

LIST OF WITNESSES

If a public hearing is held, DPS anticipates having the following witnesses testify in support of the need for and reasonableness of the proposed rule:

1. Dr. Ilo Leppik of the University of Minnesota will testify about the medical basis for the proposed rule.
2. Dr. Elson So of the Mayo Clinic will testify about the medical basis for the proposed rule.
3. Dr. Lizbeth S. de Padua of MINCEP Epilepsy Care will testify about the medical basis for the proposed rule.
4. Ms. Joan Kopcinski, Driver Services Program Director, Department of Public Safety, will testify about the practical application and implications of the current and proposed rules.

LIST OF EXHIBITS

To demonstrate the need for and reasonableness of the proposed rule, DPS anticipates that it will enter the following exhibits into the hearing record:

1. American Academy of Neurology, et al., *Consensus Statements, Sample Statutory Provisions, and Model Regulations Regarding Driver Licensing and Epilepsy*, 35 *Epilepsia* 696 (1994) <<http://www3.interscience.wiley.com/cgi-bin/fulltext/119264946/PDFSTART>>.
2. Ramon Edmundo D. Bautista & Peter Wludyka, *Driving Prevalence and Factors Associated with Driving Among Patients With Epilepsy*, 9 *Epilepsy & Behav.* 625 (2006).
3. Joseph F. Drazkowski, M.D., et al., *Seizure-Related Motor Vehicle Crashes in Arizona Before and After Reducing the Driving Restriction from 12 to 3 Months*, 78 *Mayo Clinic Proc.* 819 (2003) <<http://www.mayoclinicproceedings.com/content/78/7/819.full.pdf>>.
4. John O. Elliott & Lucretia Long, *Perceived Risk, Resources, and Perceptions Concerning Driving and Epilepsy: A Patient Perspective*, 13 *Epilepsy & Behav.* 381 (2008) <<http://www.epilepsyfoundation.org/local/connecticut/upload/YEBEH1606-Driving.pdf>>.
5. G.L. Krauss, M.D., et al., *Risk Factors for Seizure-related Motor Vehicle Crashes in Patients with Epilepsy*, 52 *Neurology* 1324 (1999).
6. Soham G. Sheth, M.B.B.S., M.P.H., et al., *Mortality in Epilepsy: Driving Fatalities Vs. Other Causes of Death in Patients with Epilepsy*, 63 *Neurology* 1002 (2004).
7. Joan Taylor, et al., *Risk of Accidents in Drivers with Epilepsy*, 60 *J. Neurology, Neurosurgery, and Psychiatry* 621 (1996) <<http://www.pubmedcentral.nih.gov/picrender.fcgi?artid=1073944&blobtype=pdf>>.

RULE ANALYSIS

The necessity and reasonableness of this rule having been established in earlier rulemakings, DPS is restricting its analysis here to the narrow subject of the proposed amendment. *See* Minn. R. 1400.2070, subp. 1 (“If an agency is amending existing rules, the agency need not demonstrate the need for and reasonableness of the existing rules not affected by the proposed amendments.”). Specifically, DPS is focusing on the need for and reasonableness of allowing individuals who have experienced a periodic or episodic loss of consciousness or voluntary control to seek reinstatement of their driving privileges after three months, rather than the six-month minimum of the current rule.

As a preface to this analysis, it is important to note that not all of the losses of consciousness or voluntary control governed by this rule would necessarily be medically defined as “seizures” and that not all seizures are epileptic. However, most people whose driving privileges are withdrawn under this rule have been diagnosed with an epileptic disorder, and most of the scientific research done on driving and losses of consciousness or voluntary control has focused on drivers with epilepsy and on crashes that have been attributed to a driver’s seizure. It is within this context that DPS has evaluated the current rule and developed the proposed amendment. In addition, because of recent medical advances in the treatment of epilepsy and other conditions causing losses of consciousness and voluntary control, DPS largely has focused its review of the literature upon studies published within the last ten years. The research on which DPS principally relied is listed in the preceding section, “List of Exhibits.”

All of the United States restrict or withdraw the driving privileges of citizens whose medical fitness to drive is questionable or demonstrably impaired. A majority of states require drivers to have been free of losses of consciousness or control for a specified amount of time – ranging from three to twelve months – before the states will consider restoring full driving privileges. This is commonly referred to as the “seizure-free interval,” or SFI.

There is no clear answer as to whether drivers who have experienced seizures are more likely to be involved in crashes than the general motoring public. While at least one study suggests that seizure-related crashes are more likely to result in serious injury (Taylor, 1996), whether such crashes are more likely to result in death is unclear. However, the percentages of crashes and driving fatalities attributable to losses of consciousness or voluntary control appear to be relatively small. Researchers in one study concluded that seizures contributed to only 0.04% of all the crashes they examined (Drazkowski, 2003), and another team of researchers associated 0.2% of driving fatalities with seizures, versus the 31% of fatalities associated with alcohol (Sheth, 2004).

Any crash is one too many. Yet DPS acknowledges that no rule can prevent all crashes caused by losses of consciousness or voluntary control:

- At least some of these crashes are likely to involve drivers who have never before experienced such an episode (Krauss, 1999).
- Some crashes may involve drivers who miss doses of the medications that keep their conditions under control or who otherwise do not comply with their doctors' advice (Krauss, 1999).
- Some crashes may involve drivers who have withheld information about their medical conditions from the state driver licensing authority, and even their doctors, so that their driving privileges will not be withdrawn (Elliott, 2008; Krauss, 1999).
- Some crashes may involve drivers who continue to drive even after having had their privileges withdrawn (Sheth, 2004), after being involved in one or more seizure-related crashes (Krauss, 1999), or despite the fact that their seizures are not well controlled (Bautista, 2006).
- Some crashes may involve drivers who continue to drive because they are employed. Being employed was found to be a major reason drivers with poorly controlled seizures continue to drive (Bautista, 2006).

One study of 50 drivers involved in 74 crashes suggests that the longer an individual's SFI is, the less likely s/he is to be involved in a crash (Krauss, 1999). In this study, the crash risk was reduced 93% for patients who had been seizure-free for twelve or more months (relative to those who had been seizure-free for shorter periods) but by just 85% for those who had been seizure-free for six or more months. There was no statistically significant difference in the crash rates of those who had been seizure-free for three or more months and those who had been seizure-free for fewer than three months. However, the study's authors urged caution in extrapolating these results, since the subjects were epilepsy clinic patients whose seizures were less controllable than in the general epilepsy population.

In light of this study, one might surmise that seizure-related crash rates would be lower in states with longer SFI requirements. However, another study (co-authored by two of the same researchers) found that states with three-month SFI requirements had the same or even lower seizure-related crash fatality rates as those states with six- and twelve-month SFIs (Sheth, 2004). Whether the drivers involved possessed valid licenses was unknown, but the study's authors observed that a "large proportion" of patients with epilepsy disregard driving restrictions.

These findings are consistent with a time trend study of crashes in Arizona that involved researchers from the Mayo Clinic (Drazkowski, 2003). In April 1994, Arizona reduced its SFI standard from twelve months to three. A study of crashes over the three-year periods preceding and following the rule change revealed no increase in the incidence rate of crashes associated with seizures after the three-month rule was adopted. Seizure-related crashes involving injuries increased by 31% during the later three-year period;

however, during that same time, the number resulting in fatalities dropped by 64%. Whether the drivers possessed valid licenses could not be ascertained.

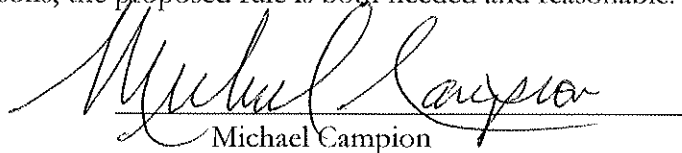
In 1994, the American Academy of Neurology (AAN), the American Epilepsy Society, and the Epilepsy Foundation of America joined in a consensus statement in which the organizations urge states to adopt a three-month SFI standard when restricting the driving privileges of individuals who have experienced epileptic seizures. The AAN reaffirmed its support of this statement in 2006.

Based upon the foregoing information, the department has concluded that reducing the mandatory minimum withdrawal period from six months to three strikes an appropriate balance between the competing interests of the affected drivers and the general public. The department hopes that the shorter minimum withdrawal period will encourage greater compliance with driving restrictions and that it will ease the economic and social burdens on individuals whose conditions can be controlled within the shorter period of time. However, to protect public safety, the department will continue to require affected drivers to submit a physician's statement meeting the rule's criteria before it will reinstate driving privileges.

CONCLUSION

For the foregoing reasons, the proposed rule is both needed and reasonable.

July 27, 2010


Michael Campion
Commissioner

Available for public review on July 27, 2010.