



National Transportation Safety Board

Washington, D.C. 20594

Safety Recommendation

Date: September 10, 2001

In reply refer to: H-01-17 through -25

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Acting Deputy Administrator
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On May 9, 1999, about 9:00 a.m., a 1997 Motor Coach Industries 55-passenger motorcoach, operated by Custom Bus Charters, Incorporated (Custom), was traveling eastbound on Interstate 610 in New Orleans, Louisiana. The bus, carrying 43 passengers, was en route from La Place, Louisiana, to a casino approximately 80 miles away in Bay St. Louis, Mississippi. As the bus approached milepost 1.6, it departed the right side of the highway, crossed the shoulder, and went onto the grassy side slope alongside the shoulder. The bus continued on the side slope, struck the terminal end of a guardrail, traveled through a chain-link fence, vaulted over a paved golf cart path, collided with the far side of a dirt embankment, and then bounced and slid forward upright to its final resting position. Twenty-two passengers were killed, the busdriver and 15 passengers received serious injuries, and 5 passengers received minor injuries.¹

Despite suffering from potentially incapacitating medical conditions, the driver involved in the New Orleans accident was able to obtain a medical certificate by falsifying and omitting crucial health history information from the examination form. The examiner was able to determine that the driver had heart disease, and possibly kidney disease, but she believed that the Federal regulations did not preclude the driver from obtaining a medical certificate.

Based on its investigation of the New Orleans accident and of other accidents involving drivers with known serious medical conditions who were still able to obtain medical certificates and based on testimony given at the National Transportation Safety Board's January 2000 hearing on commercial driver oversight,² the Safety Board has determined that serious flaws exist in the medical certification process for commercial drivers and concluded that:

- Individuals who are authorized to perform medical examinations and certify commercial drivers as fit to drive may lack knowledge and information critical to

¹ For more information, read: National Transportation Safety Board, *Motorcoach Run-Off-the-Road Accident, New Orleans, Louisiana, May 9, 1999*, Highway Accident Report NTSB/HAR-01/01 (Washington, DC: NTSB, 2000).

² National Transportation Safety Board public hearing, *Effectiveness of Commercial Driver Oversight Programs*, New Orleans, Louisiana, January 20 through 21, 2000.

certification decisions. Consequently, drivers with serious medical conditions may not be evaluated sufficiently to determine whether their condition poses a risk to highway safety.

- The regulations on the medical certification of commercial drivers do not reflect current medical knowledge and information and can be ambiguous regarding the conditions that may constitute disqualification.
- The new medical certification form for commercial drivers is a substantial improvement over the previous version and, if used in its entirety and in conjunction with attached instructions, will aid examiners in making certification decisions.
- Not all individuals who are authorized to perform medical examinations and certify commercial drivers as fit to drive are made aware of information sources that could assist them with certification decisions.
- The absence of a process under which every driver medical examination form is reviewed greatly increases the likelihood that medical certificates will be issued inappropriately, thereby allowing medically unqualified commercial vehicle drivers to continue driving.
- In the absence of a mechanism to track all medical certification examinations, a commercial driver with a serious medical condition who is denied a medical certificate by one examiner may be able to obtain a medical certificate from another examiner, thus subverting the purpose of the medical certification process.
- Many drivers whose occupations and serious medical conditions are known to their employers, health care providers, and others are never reported, thereby potentially endangering the drivers themselves and others.
- Enforcement authorities cannot, in most instances, determine the validity of a medical certificate during safety inspections and routine stops because of the absence of procedures or information sources to validate the medical certificate itself.
- The inability to authenticate the information on a medical certificate hampers enforcement authorities in their ability to identify unfit drivers and place them out of service.

As a result of its investigation of medical certification issues, the Safety Board found a number of elements to be critical to the establishment of an effective medical certification program for commercial drivers, as discussed below:

Qualified Examiners. Examiners should have specific training for performing examinations to determine the fitness of commercial drivers; in addition, examiners required to be the certifying authority should have a background permitting them to adequately evaluate all common medical conditions or medications for their potential to impair a driver.

Medical Certification Regulations. The regulations are updated regularly to permit trained examiners to clearly determine whether to issue a medical certificate to drivers with certain common medical conditions.

Adequate Guidance. Potential examiners should receive guidance that permits them to perform a physical examination adequate for making informed certification decisions on a commercial driver. Examiners, if required to be the certifying authority, are given guidance regarding the certification of medical conditions not covered by the regulations. Examiners should have a readily identifiable source of information for specific questions in which the guidance may be inadequate.

Review Process. Completed examination forms should undergo at least one review by a trained individual other than the examiner so that certifications issued in error are corrected or prevented. All applications or completed medical examinations on commercial drivers are recorded and reviewed so that comparisons may be made of every subsequent application or examination. This comparison ensures that significant changes in medical information provided through the medical certification system can be adequately evaluated.

Identification of Invalid Certification. Law enforcement will be able to establish during safety inspections and routine stops that a commercial driver's medical certification is valid.

Removal of Uncertified Drivers. Upon determining the validity of a certificate, law enforcement can disqualify a driver from operating a commercial vehicle. The driver will not be permitted to return to commercial driving until receiving a medical evaluation that establishes that the driver has no potentially impairing or incapacitating medical condition.

Reporting of Medical Conditions. Drivers who are found by their employers, their health care providers, or others to have developed a potentially impairing or incapacitating condition between required medical certification examinations will be reported to the appropriate regulatory authority. All potential reporters of such information are aware of and are able to utilize procedures for such reports. All medical conditions discovered through such a reporting process will be adequately evaluated.

The severity of the New Orleans busdriver's medical condition might have been rare, but the situation is not unique. The ease in which the current medical certification procedures can be bypassed virtually assures that some unfit drivers will find their way behind the wheel of a commercial vehicle, endangering themselves and the motoring public.

In addition to identifying problems with the medical certification process, this investigation found that no mechanism exists for identifying drivers who have tested positive for drugs. When the New Orleans driver applied for the position at Custom, he listed his former positions with Hertz Car Rental and Turner's Bus Service, but did not mention positions held with The Regional Transit Authority and with Westside Bus Service, in which he had been dismissed for testing positive for marijuana. He explained the gaps in his employment record by stating that he was a musician in a brass band during those times.

Custom sent requests for information to both Hertz Car Rental and Turner's Bus Service, both of which were authorized by the busdriver. However, Custom did not receive a response

from either company. During his tenure with Custom, the driver underwent a preemployment and three random drug tests with negative results.

Three problems are evident from the events described above. First, the driver was able to avoid negative scrutiny from Custom by omitting parts of his employment history. Second, although Custom obtained the driver's permission to investigate his employment history, it did not receive a response from any of the former employers it contacted. Third, no enforcement mechanism or incentive exists to compel previous employers to comply with information requests.

Although the 1996 notice of proposed rulemaking (NPRM) on new driver safety performance history proposes that prospective employers expand their inquiries into a driver's background, it is still possible for drivers to hide positive drug test results in the manner of the New Orleans driver. Title 49 *Code of Federal Regulations* (CFR) 391.21 requires drivers to provide carriers with the names and addresses of employers from their previous 3 years of employment, including their employment dates and reasons for leaving. However, drivers are unlikely to provide such history when it might limit their opportunities for employment. Additionally, enforcing this requirement is difficult because the only way to detect a false employment history would be to obtain employment information from someone other than the driver.

The April 2001 NPRM on workplace drug and alcohol testing programs issued by the FMCSA proposes that employers ask individuals applying for safety-sensitive positions whether, in the past 2 years, they had ever tested positive on, or had refused to test for, any preemployment drug or alcohol test administered by an employer who subsequently did not hire them. The Safety Board does not believe this self-reporting method will effectively identify problem drivers because drivers are unlikely to provide information that may limit their employment opportunities. Because employees are unlikely to divulge positive drug test results and because prospective employers may not have sufficient employment history or the authority to obtain information from previous employers regarding positive drug tests, the Safety Board concludes that results of tests for controlled substances performed under the U.S. Department of Transportation testing guidelines, even when positive, are often not available to prospective employers, making it difficult for them to make well-informed hiring decisions.

Drivers who own and operate their own commercial vehicles (owner-operators) are required to comply with all the requirements stipulated for both drivers and employers. Owner-operators are thus in the precarious position of overseeing their own substance abuse program. No Federal requirements exist for reporting drivers who have tested positive for controlled substances to any regulatory or certifying authority. Therefore, the only entity with information regarding a positive test is the employer, who, if an owner-operator, may also be the individual being tested. Such an arrangement requires owner-operators who are abusing controlled substances to remove themselves from driving if they test positive for such substances. It seems highly unlikely that owner-operators who are not complying with regulations regarding the use of controlled substances will comply with other sections of the drug testing regulations. Therefore, the Safety Board concludes that the current Federal drug testing regulations cannot adequately identify owner-operators who abuse controlled substances.

A database that records positive drug and alcohol test results and refusal determinations for all commercial drivers would provide an effective way for both employers and certifying authorities to verify and evaluate the drug test history of all commercial drivers. Such a database would allow employers to make more informed hiring decisions and would allow certifying authorities to determine whether a driver has a potentially disqualifying medical condition regarding substance abuse.

Therefore, the National Transportation Safety Board recommends that the Federal Motor Carrier Safety Administration:

Develop a comprehensive medical oversight program for interstate commercial drivers that contains the following program elements:

- Individuals performing medical examinations for drivers are qualified to do so and are educated about occupational issues for drivers. (H-01-17)
- A tracking mechanism is established that ensures that every prior application by an individual for medical certification is recorded and reviewed. (H-01-18)
- Medical certification regulations are updated periodically to permit trained examiners to clearly determine whether drivers with common medical conditions should be issued a medical certificate. (H-01-19)
- Individuals performing examinations have specific guidance and a readily identifiable source of information for questions on such examinations. (H-01-20)
- The review process prevents, or identifies and corrects, the inappropriate issuance of medical certification. (H-01-21)
- Enforcement authorities can identify invalid medical certification during safety inspections and routine stops. (H-01-22)
- Enforcement authorities can prevent an uncertified driver from driving until an appropriate medical examination takes place. (H-01-23)
- Mechanisms for reporting medical conditions to the medical certification and reviewing authority and for evaluating these conditions between medical certification exams are in place; individuals, health care providers, and employers are aware of these mechanisms. (H-01-24)

Develop a system that records all positive drug and alcohol test results and refusal determinations that are conducted under the U.S. Department of Transportation testing requirements, require prospective employers to query the system before making a hiring decision, and require certifying authorities to query the system before making a certification decision. (H-01-25)

The Safety Board also issued safety recommendations to the American Association of Motor Vehicle Administrators, the National Conference of State Legislatures, the American Association of State Highway and Transportation Officials, and the Louisiana Department of Transportation and Development. In addition, the Safety Board reiterated five recommendations from its 1999 bus crashworthiness special investigation³ to the National Highway Traffic Safety Administration. Please refer to Safety Recommendations H-01-17 through -25 in your reply. If you need additional information, you may call (202) 314-6607.

Acting Chairman CARMODY and Members HAMMERSCHMIDT, GOGLIA, and BLACK concurred in these recommendations.

Original Signed

By: Carol J. Carmody
Acting Chairman

³ For more information, read: National Transportation Safety Board, *Bus Crashworthiness Issues*, Highway Special Investigation Report NTSB/SIR-99/04 (Washington, DC: NTSB, 1999).

