

Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
August 20, 2018

Our File No. 729

9/29 A. Bateson requested to send 2 more copies of rules

RULE REVIEW CHECKLIST

DATE RULE RECEIVED 9/14/81
DATE FOR REVIEW 9/25
DATE DUE 10/5

Adopted w/a hearing X
Adopted w/o a hearing
Temporary rule

Approved 10/5 Disapproved Returned to Agency

Resubmitted Due
Approved Disapproved Returned to Agency

Date filed w/Secretary of State 10/5 REVISOR approved 9/16/81

✓ Rule as Adopted

✓ Rule as Proposed + Memo, Sopsic to Lunde re suggested changes.

✓ Order Adopting 8.26.81

✓ Notice of Intent to Solicit Outside Opinion 10.13.80

✓ Order for rulemaking
5.28.81. Date of Hearing

N/A Certificate of Board's Authorizing Resolution

✓ Notice of rulemaking
✓ Sufficiency

✓ Affidavit of Mailing Notice of rulemaking
4.16.81 At least 30 days prior to hearing/~~adoption~~

✓ Mailing list Certificate

✓ Publication in State Register
4.20.81 At least 30/~~20~~ days prior to hearing/~~adoption~~

✓ Hearing Examiner's Report 6.18.81

✓ Chief Hearing Examiner's Report(s)
✓ 6.19.81 Approving H.E.'s Report
✓ 8.28.81 Approving agency action

✓ Agency's Findings of Fact

N/A LCRAR Report or agency Affidavit

N/A Certificate of Board's Resolution Adopting Rules

N/A Order Approving Incorporation by Reference

✓ Statement of Need and Reasonableness

N/A Petition for Adoption of a Rule ~~but~~ see HE 6

✓ Record (includes transcript or tape, exhibits, comments received by agency, requests for a hearing, and other relevant materials)

✓ Certificate of Compliance w/Rulemaking Procedures

✓ Affidavit of Mailing Notice of Submission to Attorney General
9.14.81

✓ Notice of Submission to the Attorney General

SF-00006-02

STATE OF MINNESOTA

DEPARTMENT ATTORNEY GENERAL

Office Memorandum

TO : DIANE HAMILTON
Management Analyst
Department of Public Safety

DATE: October 5, 1981

ATTN : James B. Early
Special Assistant Attorney General

FROM : H. Theodore Grindal
Special Assistant
Attorney General

PHONE: 296-1288

SUBJECT: In the Matter of the Proposed Adoption of Rules of the State Department of Public Safety Governing Standards for Administration of Driver License Laws Pertaining to Physical or Mental Qualifications

Enclosed herewith are the rules you have submitted for approval. These rules have been approved by this office and filed with the Secretary of State. Please note that they have not been filed with the State Register; this must be done promptly by your agency.

Upon receipt and before transmittal to your agency, however, it is important that you recheck these rules as to:

1. Affixation of stamps of the Attorney General and Secretary of State to the last page of the rules;

2. Coverage by these stamps of all rules submitted; and

3. Inclusion of all pages to the rules in the approved set.

If you have any questions in this regard, please contact me.

Enc.

cc: Kathy Burek
Duane Harves

RECEIVED
MAR 27 1981
ADMINISTRATIVE HEARINGS

STATE OF MINNESOTA

DEPARTMENT OF PUBLIC SAFETY

In the Matter of the Proposed Adoption of Rules of the State Department of Public Safety Governing Standards for Administration of Driver License Laws Pertaining to Physical or Mental Qualifications

ORDER FOR HEARING

IT IS ORDERED this 26th day of March, 1981, that a public hearing on the proposed rules captioned above be held in Room G-18 Transportation Building, John Ireland Boulevard, St. Paul, Minnesota 55155, on May 28, 1981, commencing at 9:00 A.M., and continuing until all representatives of associations or other interested groups or persons have had an opportunity to be heard.

IT IS FURTHER ORDERED, that a notice of said hearing be given to all persons who have registered their names with the State Department of Public Safety for that purpose, and be published in the State Register.

STATE OF MINNESOTA

COMMISSIONER OF PUBLIC SAFETY

DPS Exh. No. 2
File No. DPS-81-002
Date 5-28-81

ADMIN 1000 (Rev. 1/78)
SF-00006-01

STATE OF MINNESOTA

DEPARTMENT PUBLIC SAFETY

Office Memorandum

TO : Jerry Anderson
Office of Attorney General

DATE: September 14, 1981

FROM : Diane Hamilton
Management Analyst
Department of Public Safety

PHONE: 6-7096

SUBJECT: Submission of Rules

Enclosed is the entire hearing record for rules promulgated by the Department of Public Safety on Standards for Administration of Driver's License Laws Pertaining to Physical or Mental Qualifications.

You will find several duplications of materials; however, they are included in order to preserve the hearing examiner's exhibit numbering sequence. Please return any documents not needed.

DH:bjj

Enclosures

Department of Public Safety

Driver & Vehicle Services Division

Adopted Rules Governing Standards for Administration of Driver License Laws Pertaining to Physical or Mental Qualifications (11 MCAR SS 1.4092-1.4099)

Rules as Adopted

Chapter Nine:
Standards for Administration of Driver License Laws Pertaining to Physical or Mental Qualifications

11 MCAR S 1.4092 Purpose and scope.

A. Purpose. This chapter ~~is to set~~ sets out general standards for effective administration of the driver licensing statutes relating to the issuance, restriction or denial of driving privileges with respect to persons having physical or mental disabilities under Minn. Stat. SS 171.04; 171.13 and 171.14.

B. Scope. These rules are intended to be confined within the framework of, and consistent with, the provisions of Chapter 171 of Minnesota Statutes.

C. Definitions. When used in these rules, the following phrase shall have the following meaning: "Good cause to believe" ~~:~~ means grounds put forth in good faith which are not arbitrary,

irrational, unreasonable or irrelevant and which are based on at least one of the following sources:

1. Written information from an identified person;

2. Facts supplied by the driver or applicant;

3. Facts of which the commissioner or his employees or agents have personal knowledge.

11 MCAR S 1.4093 Vision.

A. General. Every applicant shall submit to a vision screening or examination. The screening device, designed to screen 20/40 or better corrected vision, shall be of a type accepted by the American Medical Association. The purpose of the vision screening is:

1. To screen each applicant to guarantee that those individuals with substandard vision are required to take the necessary steps required to achieve the best vision possible.

2. To deny driving privileges to those whose vision is likely to interfere with the safe operation of motor vehicles in traffic.

B. Corrective lenses not required. Except as otherwise provided herein, no corrective lenses will be required where the applicant:

1. Scores 20/40 or better, with either one or both eyes, without corrective lenses;

2. Has one eye, but scores 20/40 or better, without corrective lenses; or

3. Has the recommendation of an eye specialist that corrective lenses not be worn. In these cases, the commissioner shall either require the applicant to be examined further, ~~to~~ or impose suitable restrictions upon his driving privileges or both.

C. Corrective lens requirement. Corrective lenses shall be required in all cases when:

1. The applicant scores less than 20/40 with ~~either one or~~ both eyes unassisted but scores 20/40 or better with corrective lenses;

2. The applicant submits a physician's statement, in a

form as may be prescribed by the commissioner, indicating that the applicant scores 20/40 or better with either eye, or both eyes together, but where the physician recommends that the applicant wear corrective lenses; or

3. The applicant is blind in one eye and scores less than 20/40 with the other eye unassisted, but scores 20/40 or better with corrective lenses.

D. Vision examinations. Any applicant shall be required to submit a vision report from a physician in a form as prescribed by the commissioner when:

1. The applicant disagrees with the results of the screening conducted by any driver examiner;

2. The applicant has cataracts;

3. The driver examiner is unable to determine the extent of the applicant's vision;

4. Any court or police officer has recommended that the applicant's vision be examined;

5. The commissioner determines, in some other situation, when he has good cause to believe that an examination is warranted;

6. The applicant has strabismus; or

7. The applicant has double vision.

E. Vision restricted licenses. Applicants who score 20/50 or less corrected vision with either one usable eye or with two eyes shall, if otherwise eligible, be issued a restricted license to permit driving subject to the following restrictions:

1. Speed restrictions

20/50	---	55 miles per hour
20/60	---	50 miles per hour
20/70	---	45 miles per hour

When the applicant scores 20/80 to 20/100 corrected vision, the application will be referred to the Chief Evaluator who shall determine whether a restricted license can be issued and the kinds of restrictions which are necessary to ensure that the applicant does not pose an unreasonable safety risk to himself or others. When the applicant scores 20/100 or less corrected

vision, or is known to be receiving assistance for the blind, all privileges shall be denied and any existing license cancelled under authority of Minn. Stat. SS 171.14 and 171.04 (9).

2. Restriction as to type of road. Any applicant subject to speed restrictions under Paragraph E.1. may also be restricted to those roads having a maximum speed limit equal to the maximum speed limit imposed upon the applicant, if the commissioner determines that the restriction is necessary for the safety of the applicant and the public. Any person limited to a maximum speed of 45 m.p.h. or less shall be restricted from driving on any freeway, expressway, or limited access highway with a speed limit of more than 45 m.p.h.

3. Area restrictions. Any applicant who scores 20/50 or less corrected vision with both eyes may be restricted to driving within an area to be determined by the commissioner, if the commissioner determines that the restriction is necessary for the safety of the applicant and the public.

F. Other situations. Any vision readings or problems not covered by the above general standards shall be referred to the Chief Evaluator, who shall determine whether a restricted license can be issued and the kinds of restrictions which are necessary to ensure that the applicant does not pose an unreasonable safety risk to himself or others.

11 MCAR S 1.4094 Loss of consciousness or voluntary control.

A. General. This rule applies to all drivers and applicants for driving privileges who suffer from any paroxysmal disturbances of consciousness, including, but not limited to, epilepsy. Any person suffering from ~~narcolepsy or~~ syncope of any cause, as well as any other type of periodic or episodic loss of consciousness or voluntary control, is included. This rule applies regardless of whether the driver or applicant has an "aura" or warning of imminent seizure or attack or whether the driver or applicant has only had nocturnal attacks, and no exceptions shall be made for such drivers or applicants.

B. Physician's report. When the commissioner has good cause to believe that a driver or applicant suffers from any of the periods of unconsciousness mentioned in A. above, a physician's report in such form as the commissioner may prescribe shall be required within 30 days or within such reasonable time that the person may require to obtain the report from the physician. This report shall include a sworn statement from the driver or applicant as to the date of his last period of unconsciousness.

C. Criteria for cancellation. If this report is not filed, or, if upon review of the doctor's report the commissioner finds that the individual has suffered from periods of unconsciousness, with the last period of unconsciousness occurring within the last 12 months, all driving privileges shall be cancelled under the authority of Minn. Stat. S 171.14 and denied under authority of Minn. Stat. S 171.04 (9). The person shall not be issued any driving privileges until the commissioner finds that the person is competent to drive safely.

D. Criteria for reinstatement. For reinstatement the commissioner shall require a satisfactory doctor's report and a satisfactory sworn statement from the person stating the date of the last period of unconsciousness and that it occurred at least 12 months previously.

E. Review of driver's condition. Except as otherwise provided below, any driver suffering from medical conditions subject to this rule shall be required to submit an annual physician's statement in the form prescribed by the commissioner, with respect to his medical history, present situation, and the prognosis with respect to the applicant's ability to operate a motor vehicle with safety to himself and others.

1. When the commissioner has good cause to doubt the stability of the driver's condition, the commissioner shall require physician's statements every six months, or at such shorter intervals as recommended by the reporting physician.

2. After three successive annual physician's statements indicating no episodes of loss of voluntary control, while on

medication, the commissioner shall require a physician's report every four years, unless the physician recommends more frequent reports.

4 3. When the physician's statement indicates that an episode of loss of voluntary control resulted from a change or removal of medication on the physician's orders, the commissioner will not cancel the privilege to drive. However, a physician's statement shall be required every six months until the person has been episode-free for not less than one year.

5 4. When the physician reports that there has been only one such episode, the procedure shall be as indicated in ~~Paragraph E. 4. above~~ 3.

11 MCAR S 1.4095 Diabetes.

A. General. When the commissioner has good cause to believe that a driver or applicant has diabetes, or has experienced a loss of voluntary control due to either insulin reaction or acidosis, a physician's report shall be required within 30 days or within such reasonable time that the person may require to obtain the report from the physician. If the physician's statement is not filed, or, if upon review of the report from the physician the commissioner finds that a person cannot drive safely, all driving privileges shall be cancelled under authority of Minn. Stat. S 171.14 and denied under authority of Minn. Stat. S 171.04 (9). The person shall not be issued any driving privileges until the commissioner finds that the person is competent to drive safely. For reinstatement, the commissioner shall require a satisfactory physician's report, demonstrating the individual is competent to drive safely.

B. Insulin control. When the driver or applicant uses insulin to control diabetes, a physician's statement shall be required annually in the form prescribed by the commissioner. If the person remains free of episodes of loss of voluntary control due to insulin reaction or acidosis, for a period of 5 years, the physician's report shall be required every two years, unless the physician recommends more frequent reports. If the

person remains episode-free for three of these two-year review periods, the physician's report shall be required every four years unless the physician recommends more frequent reports. If there is an episode of loss of voluntary control, the physician's report shall be required every six months, until the person has been episode-free for one year.

11 MCAR S 1.4096 Mental illness or deficiency.

A. For the purposes of this section, good cause to believe exists only if the commissioner has:

1. Information that a person has operated a vehicle in an unsafe manner, or

2. Information that a person lacks judgment and coordination to safely operate a vehicle based on competent medical authority, or

3. Facts supplied by the driver or applicant.

B. When the commissioner has good cause to believe that a person is mentally ill, incompetent or deficient, and that the mental illness, incompetency or deficiency will affect the person in a manner to prevent him from exercising reasonable and ordinary control over a motor vehicle while operating it upon the highways, a physician's statement, in such form as the commissioner may prescribe, shall be required within 30 days or in such reasonable time that a person may require to obtain a physician's statement. If the physician's statement is not filed, or, if upon review of the report from the physician the commissioner finds that a person cannot drive safely, all driving privileges shall be cancelled under authority of Minn. Stat. S 171.14 and denied under authority of Minn. Stat. S 171.04 (5) or (9). The person shall not be issued any driving privileges until the commissioner finds that the person is competent to drive safely.

C. For reinstatement, the commissioner shall require a satisfactory statement from any institution in which the person has been treated, from any treating physician, or from any competent ~~medical~~ authority ~~acceptable to the commissioner,~~

demonstrating that the individual is competent to drive safely.

11 MCAR S 1.4097 Miscellaneous physical or mental conditions.

A. When the commissioner has good cause to believe that any of the situations listed in B. exist, and would adversely affect the driver's or applicant's ability to drive safely, a physician's statement in such form as the commissioner may prescribe, shall be required within 30 days, or in such reasonable time that a person may require to obtain a physician's statement. If the physician's statement is not filed, or, if upon review of the statement the commissioner finds that the person cannot drive safely, all driving privileges shall be cancelled under authority of Minn. Stat. S 171.13 ~~(4)~~, subd. 4, or Minn. Stat. S 171.14 and denied under authority of Minn. Stat. S 171.04 (9). The person shall not be issued any driving privileges until the commissioner finds that the person is competent to drive safely.

B. Situations covered by paragraph A. are:

1. Use of any medication, whether or not prescribed.

2. Any disease that raises reasonable doubts as to the person's ability to drive safely.

3. Use of alcohol or controlled substances.

4. Lack of physical control, such as that manifested by fainting or dizzy spells, blackouts or periods of unconsciousness.

5. Lack of physical endurance, such as that manifested by a person subject to fatigue, exhaustion, nervous tension, or adverse reaction to monotony.

6. Abnormal reflexes, such as those manifested by persons suffering from cerebral palsy, multiple sclerosis, Parkinson's disease, or similar conditions.

C. When the commissioner has good cause to doubt the adequacy of the driver's or applicant's ability to safely operate a vehicle under the conditions listed in D., a driver's license examination shall be required within 30 days or within such reasonable time that a person may need to obtain a driver's

test. If the driver's test is not satisfactorily completed within 30 days, or in such reasonable time as the person may require to obtain an examination, all driving privileges shall be cancelled under the authority of Minn. Stat. S 171.13 and denied under the authority of Minn. Stat. S 171.04. For reinstatement, the commissioner shall require proof of satisfactory completion of the driver's test.

D. Conditions covered by ~~paragraph~~ C. are:

1. Driving procedures;
2. Judgment of space, time and motion;
3. Physical strength to operate a vehicle's controls;
4. Physical condition to operate a vehicle.

11 MCAR S 1.4098 Other restricted licenses.

A. Issuance. When a person has failed, after three attempts, to pass the driver's license examination, but can establish a genuine need to be able to drive, he may apply for a restricted license. All such applications shall be referred to the Chief Driver Evaluator. The applicant must undergo examination by an examining supervisor, who shall determine the risk involved, and forward his/her written recommendations, including, when applicable, suggested basic restrictions, to the Chief Driver Examiner for forwarding to the Chief Driver Evaluator. The Chief Driver Evaluator shall review the entire record and determine whether any driving privileges may be authorized.

B. Cancellation. Any restricted licenses issued shall be subject to cancellation whenever the commissioner determines that the person has violated the restrictions imposed. The commissioner may notify local law enforcement agencies of the issuance of any special restricted license and of the restrictions involved. Any report of a violation of the restrictions shall be referred to the Chief Driver Evaluator for consideration. Any conviction indicating a violation of the restrictions shall result in cancellation. After cancellation no driving privileges may be allowed until the commissioner

determines that the licensee can be trusted to operate within the restrictions imposed. Any reinstatement may be conditioned upon compliance with additional restrictions for such period as the commissioner may direct.

11 MCAR S 1.4099 Medical review board.

A. Composition. A medical review board shall be established for each of the various general types of physical and mental qualifications dealt with by these rules. Each medical review board shall consist of one or more licensed physicians nominated by the state medical association. The physicians shall preferably be specialists in the area to which the problem relates.

B. Variance.

1. When a person disagrees with the determination of the commissioner, he may apply, in writing, for a variance from ~~rules to~~ 11 MCAR SS 1.4092-1.4098.

2. A variance from statutory standards shall not be granted. A variance, other than from statutory standards, shall be granted to any person who establishes, under the individual circumstances in that person's case, that the person can operate a motor vehicle safely, with reasonable and ordinary control, and without posing a danger inimical to public safety or welfare.

3. Any applicant applying for a variance shall have his treating physician or physicians provide the commissioner with a complete medical history relating to the condition in question, together with good medical reasons why a variance should be granted. The commissioner shall then forward to the appropriate medical review board all information submitted by the applicant together with the commissioner's records relating to the matter. Each physician on the review board shall review the file and make his recommendation to the chairman of the review board, who shall communicate the recommendation of the board, whether unanimous or divided, to the commissioner.

4. Upon receipt of the recommendation of the review board, the commissioner shall reconsider the application, take

whatever action he then deems appropriate, and inform the driver or the applicant of his decision~~, and, if the decision differs from the recommendation of the review board,~~ and of the reasons for the decision. This decision shall be reached and the applicant informed of the decision within 60 days of the request for a variance.

OFFICE OF THE REVISOR OF STATUTES

Certificate of Approval of Adopted Rules

Agency: Department of Public Safety
Driver and Vehicle Services Division
Rule Numbers: 11 MCAR SS 1.4092-1.4099

Rule Title: Adopted Rules Governing Standards for Administration of Driver License Laws Pertaining to Physical or Mental Qualifications (11 MCAR SS 1.4092-1.4099)

Type of Rules: Permanent X

Temporary _____

Documents Incorporated by Reference: None

The attached Rules are approved as to form.

Steven C. Cross
Revisor of Statutes

APPROVED AS TO LEGALITY
Oct. 5 1981
WARREN SPANNAUS, ATTORNEY GENERAL
BY H. Theodore Grindal
SPECIAL ASSISTANT ATTORNEY GENERAL

Name: Ward P. Gronfield
Title: Deputy Revisor

Phone: 296-0945

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED
OCT 5 - 1981
Joan Anderson Growe
Secretary of State

12:50 p.m.

Rules as Prop.

DEPARTMENT OF PUBLIC SAFETY
DRIVER & VEHICLE SERVICES DIVISION

RECEIVED
MAR 27 1981
ADMINISTRATIVE HEARINGS

CHAPTER NINE:
STANDARDS FOR ADMINISTRATION OF DRIVER LICENSE LAWS PERTAINING TO PHYSICAL OR MENTAL QUALIFICATIONS

Rule 11MCAR 1.4092 PURPOSE AND SCOPE

A. Purpose. This chapter is to set out general standards for effective administration of the driver licensing statutes relating to the issuance, restriction or denial of driving privileges with respect to persons having physical or mental disabilities under Minn. Stats. Sections 171.04; 171.13 and 171.14.

B. Scope. These rules are intended to be confined within the framework of, and consistent with, the provisions of Chapter 171 of Minnesota Statutes.

C. Definitions. When used in these rules, the following phrase shall have the following meaning:

"Good cause to believe:" grounds put forth in good faith which are not arbitrary, irrational, unreasonable or irrelevant and which are based on at least one of the following sources:

1. written information from an identified person
2. facts supplied by the driver or applicant
3. facts of which the Commissioner or his employees or agents have personal knowledge

Rule 11MCAR 1.4093 VISION

A. General. Every applicant shall submit to a vision screening or examination. The screening device, designed to screen 20/40 or better corrected vision, shall be of a type accepted by the American Medical Association.

The purpose of the vision screening is:

1. To screen each applicant to guarantee that those individuals with substandard vision are required to take the necessary steps required to achieve the best vision possible.

2. To deny driving privileges to those whose vision is likely to interfere with the safe operation of motor vehicles in traffic.

B. Corrective Lenses Not Required. Except as otherwise provided herein, no corrective lenses will be required where the applicant:

1. scores 20/40 or better, with either one or both eyes, without corrective lenses

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File No. DPS-81-002
Date 5-28-81

2. has one eye, but scores 20/40 or better, without corrective lenses; or

3. Has the recommendation of an eye specialist that corrective lenses not be worn. In these cases, the Commissioner shall either require the applicant to be examined further, or impose suitable restrictions upon his driving privileges or both.

C. Corrective Lens Requirement. Corrective lenses shall be required in all cases when:

1. The applicant scores less than 20/40 with either one or both eyes unassisted but scores 20/40 or better with corrective lenses;

2. The applicant submits a physician's statement, in a form as may be prescribed by the Commissioner, indicating that the applicant scores 20/40 or better with either eye, or both eyes together, but where the physician recommends that the applicant wear corrective lenses; or

3. The applicant is blind in one eye and scores less than 20/40 with the other eye unassisted, but scores 20/40 or better with corrective lenses.

D. Vision Examinations. Any applicant shall be required to submit a vision report from a physician in a form as prescribed by the Commissioner when:

1. The applicant disagrees with the results of the screening conducted by any driver examiner;

2. The applicant has cataracts;

3. The driver examiner is unable to determine the extent of the applicant's vision;

4. Any court or police officer has recommended that the applicant's vision be examined;

5. The Commissioner determines, in some other situation, when he has good cause to believe that an examination is warranted;

6. The applicant has strabismus; or

7. The applicant has double vision

E. Vision Restricted Licenses. Applicants who score 20/50 or less corrected vision with either one usable eye or with two eyes shall, if otherwise eligible, be issued a restricted license to permit driving subject to the following restrictions:

1. Speed Restrictions

20/50	---	55 miles per hour
20/60	---	50 miles per hour
20/70	---	45 miles per hour

When the applicant scores 20/80 to 20/100 corrected vision, the application will be referred to the Chief Evaluator who shall determine whether a restricted license can be issued and the kinds of restrictions which are necessary to ensure that the applicant does not pose an unreasonable safety risk to himself or others. When the applicant scores 20/100 or less corrected vision, or is known to be receiving assistance for the blind, all privileges shall be denied and any existing license cancelled under authority of Minnesota Statutes Section 171.14 and 171.04 (9).

2. Restriction as to Type of Road. Any applicant subject to speed restrictions under Paragraph E (1) may also be restricted to those roads having a maximum speed limit equal to the maximum speed limit imposed upon the applicant, if the Commissioner determines that the restriction is necessary for the safety of the applicant and the public. Any person limited to a maximum speed of 45 m.p.h. or less shall be restricted from driving on any freeway, expressway, or limited access highway with a speed limit of more than 45 m.p.h.

3. Area Restrictions. Any applicant who scores 20/50 or less corrected vision with both eyes may be restricted to driving within an area to be determined by the Commissioner, if the Commissioner determines that the restriction is necessary for the safety of the applicant and the public.

F. Other Situations. Any vision readings or problems not covered by the above general standards shall be referred to the Chief Evaluator, who shall determine whether a restricted license can be issued and the kinds of restrictions which are necessary to ensure that the applicant does not pose an unreasonable safety risk to himself or others.

Rule 11MCAR 1.4094 LOSS OF CONSCIOUSNESS OR VOLUNTARY CONTROL

A. General. This rule applies to all drivers and applicants for driving privileges who suffer from any paroxysmal disturbances of consciousness, including, but not limited to, epilepsy. Any person suffering from narcolepsy or syncope of any cause, as well as any other type of periodic or episodic loss of consciousness or voluntary control, is included. This rule applies regardless of whether the driver or applicant has an "aura" or warning of imminent seizure or attack or whether the driver or applicant has only had nocturnal attacks, and no exceptions shall be made for such drivers or applicants.

B. Physician's Report. When the Commissioner has good cause to believe that a driver or applicant suffers from any of the periods of unconsciousness mentioned in "A" above, a physician's report in such form as the Commissioner may prescribe,

shall be required within 30 days or within such reasonable time that the person may require to obtain the report from the physician. This report shall include a sworn statement from the driver or applicant as to the date of his last period of unconsciousness.

C. Criteria for Cancellation. If this report is not filed, or, if upon review of the doctor's report the Commissioner finds that the individual has suffered from periods of unconsciousness, with the last period of unconsciousness occurring within the last 12 months, all driving privileges shall be cancelled under the authority of MS 171.14 and denied under authority of MS 171.04 (9). The person shall not be issued any driving privileges until the Commissioner finds that the person is competent to drive safely.

D. Criteria for Reinstatement. For reinstatement the Commissioner shall require a satisfactory doctor's report and a satisfactory sworn statement from the person stating the date of the last period of unconsciousness and that it occurred at least 12 months previously.

E. Review of Driver's Condition. Except as otherwise provided below, any driver suffering from medical conditions subject to this rule shall be required to submit an annual physician's statement in the form prescribed by the Commissioner, with respect to his medical history, present situation, and the prognosis with respect to the applicant's ability to operate a motor vehicle with safety to himself and others.

1. When the commissioner has good cause to doubt the stability of the driver's condition, the Commissioner shall require physician's statements every six months, or at such shorter intervals as recommended by the reporting physician.

2. After three successive annual physician's statements indicating no episodes of loss of voluntary control, while on medication, the Comissioner shall require a physician's report every four years, unless the physician recommends more frequent reports.

4. When the physician's statement indicates that an episode of loss of voluntary control resulted from a change or removal of medication on the physician's orders, the Commissioner will not cancel the privilege to drive. However, a physician's statement shall be required every six months until the person has been episode-free for not less than one year.

5. When the physician reports that there has been only one such episode, the procedure shall be as indicated in Paragraph E (4) above.

Rule 11MCAR 1.4095 DIABETES

A. General. When the Commissioner has good cause to believe that a driver or applicant has diabetes, or has experienced a loss of voluntary control due to either insulin reaction or acidosis, a physician's report shall be required within 30 days or within such reasonable time that the person may require to obtain the report from the physician. If the physician's statement is not filed, or, if upon review of the report from the physician the Commissioner finds that a person cannot drive safely, all driving privileges shall be cancelled under authority of MS 171.14 and denied under authority of MS 171.04 (9). The person shall not be issued any driving privileges until the Commissioner finds that the person is competent to drive safely. For reinstatement, the Commissioner shall require a satisfactory physician's report, demonstrating the individual is competent to drive safely.

B. Insulin Control. When the driver or applicant uses insulin to control diabetes, a physician's statement shall be required annually in the form prescribed by the Commissioner. If the person remains free of episodes of loss of voluntary control due to insulin reaction or acidosis, for a period of 5 years, the physician's report shall be required every two years, unless the physician recommends more frequent reports. If the person remains episode-free for three of these two-year review periods, the physician's report shall be required every four years unless the physician recommends more frequent reports. If there is an episode of loss of voluntary control, the physician's report shall be required every six months, until the person has been episode-free for one year.

Rule 11MCAR 1.4096 MENTAL ILLNESS OR DEFICIENCY

For the purposes of this section, good cause to believe exists only if the Commissioner has:

1. information that a person has operated a vehicle in an unsafe manner, or
2. information that a person lacks judgment and coordination to safely operate a vehicle based on competent medical authority, or
3. facts supplied by the driver or applicant

When the Commissioner has good cause to believe that a person is mentally ill, incompetent or deficient, and that the mental illness, incompetency or deficiency will affect the person in a manner to prevent him from exercising

reasonable and ordinary control over a motor vehicle while operating it upon the highways, a physician's statement, in such form as the Commissioner may prescribe, shall be required within 30 days or in such reasonable time that a person may require to obtain a physician's statement. If the physician's statement is not filed, or, if upon review of the report from the physician the Commissioner finds that a person cannot drive safely, all driving privileges shall be cancelled under authority of MS 171.14 and denied under authority of MS 171.04 (5) or (9). The person shall not be issued any driving privileges until the Commissioner finds that the person is competent to drive safely.

For reinstatement, the Commissioner shall require a satisfactory statement from any institution in which the person has been treated, from any treating physician, or from any competent medical authority acceptable to the Commissioner, demonstrating that the individual is competent to drive safely.

Rule 11MCAR 1.4097 MISCELLANEOUS PHYSICAL OR MENTAL CONDITIONS

A. When the Commissioner has good cause to believe that any of the situations listed in "B" exist, and would adversely affect the driver's or applicant's ability to drive safely, a physician's statement in such form as the Commissioner may prescribe, shall be required within 30 days, or in such reasonable time that a person may require to obtain a physician's statement. If the physician's statement is not filed, or, if upon review of the statement the Commissioner finds that the person cannot drive safely, all driving privileges shall be cancelled under authority of MS 171.13 (4) or MS 171.14 and denied under authority of MS 171.04 (9).

The person shall not be issued any driving privileges until the Commissioner finds that the person is competent to drive safely.

B. Situations Covered by Paragraph A are:

1. Use of any medication, whether or not prescribed.
2. Any disease that raises reasonable doubts as to the person's ability to drive safely.
3. Use of alcohol or controlled substances.
4. Lack of physical control, such as that manifested by fainting or dizzy spells, blackouts or periods of unconsciousness.
5. Lack of physical endurance, such as that manifested by a person subject to fatigue, exhaustion, nervous tension, or adverse reaction to monotony.
6. Abnormal reflexes, such as those manifested by persons suffering from cerebral palsy, multiple sclerosis, Parkinson's disease, or similar conditions.

C. When the Commissioner has good cause to doubt the adequacy of the driver's or applicant's ability to safely operate a vehicle under the conditions listed in "D", a driver's license examination shall be required within 30 days or within such reasonable time that a person may need to obtain a driver's test. If the driver's test is not satisfactorily completed within 30 days, or in such reasonable time as the person may require to obtain an examination, all driving privileges shall be cancelled under the authority of MS 171.13 and denied under the authority of MS 171.04.

For reinstatement, the Commissioner shall require proof of satisfactory completion of the driver's test.

D. Conditions covered by Paragraph C are:

1. driving procedures
2. judgment of space, time and motion
3. physical strength to operate a vehicle's controls
4. physical condition to operate a vehicle

Rule 11MCAR 1.4098 OTHER RESTRICTED LICENSES

A. When a person has failed, after three attempts, to pass the driver's license examination, but can establish a genuine need to be able to drive, he may apply for a restricted license.

All such applications shall be referred to the Chief Driver Evaluator. The applicant must undergo examination by an examining supervisor, who shall determine the risk involved, and forward his/her written recommendations, including, when applicable, suggested basic restrictions, to the Chief Driver Examiner for forwarding to the Chief Driver Evaluator. The Chief Driver Evaluator shall review the entire record and determine whether any driving privileges may be authorized.

B. Any restricted licenses issued shall be subject to cancellation whenever the Commissioner determines that the person has violated the restrictions imposed. The Commissioner may notify local law enforcement agencies of the issuance of any special restricted license and of the restrictions involved. Any report of a violation of the restrictions shall be referred to the Chief Driver Evaluator for consideration. Any conviction indicating a violation of the restrictions shall result in cancellation. After cancellation no driving privileges may be allowed until the Commissioner determines that the licensee can be trusted to operate within the restrictions imposed. Any reinstatement may be conditioned upon compliance with additional restrictions for such period as the Commissioner may direct.

Rule 11MCAR 1.4099 MEDICAL REVIEW BOARD

A. A medical review board shall be established for each of the various general types of physical and mental qualifications dealt with by these rules. Each medical review board shall consist of one or more licensed physicians nominated by the state medical association. The physicians shall preferably be specialists in the area to which the problem relates.

B. When a person disagrees with the determination of the Commissioner, he may apply, in writing, for a variance from rules to . Any applicant applying for a variance shall have his treating physician or physicians provide the Commissioner with a complete medical history relating to the condition in question, together with good medical reasons why a variance should be granted. The Commissioner shall then forward to the appropriate medical review board all information submitted by the applicant together with the Commissioner's records relating to the matter. Each physician on the review board shall review the file and make his recommendation to the chairman of the review board, who shall communicate the recommendation of the board, whether unanimous or divided, to the Commissioner.

Upon receipt of the recommendation of the review board, the Commissioner shall reconsider the application, take whatever action he then deems appropriate, inform the driver or the applicant of his decision, and, if the decision differs from the recommendation of the review board, of the reasons for the decision.

This decision shall be reached and the applicant informed of the decision within 60 days of the request for a variance.

SR-00006-02

STATE OF MINNESOTA

DEPARTMENT PUBLIC SAFETY

Office Memorandum

TO : JON LUNDE
Hearing Examiner

DATE: June 8, 1981

FROM : JOHN P. SOPSIC
Commissioner of Public Safety

PHONE: 296-6642

SUBJECT: Rule Making Hearing on Standards for Administration of Driver's License Laws Pertaining to Physical or Mental Qualifications

Because of various comments received about these rules, the Commissioner of Public Safety would propose to make the following changes in the Rules before final adoption:

a. Rule 11 MCAR 1.4093 C.1.

1. The applicant scores less than 20/40 with ~~either-one-or~~ both eyes unassisted but scores 20/40 or better with corrective lenses;

p.2.

b. Rule 11 MCAR 1.4096 (last paragraph)

For reinstatement, the Commissioner shall require a satisfactory statement from any institution in which the person has been treated, from any treating physician, or from any competent ~~medical~~ authority ~~acceptable to the Commissioner~~, demonstrating that the individual is competent to drive safely.

p.7.

c. Rule 11 MCAR 1.4099 B. (first sentence)

B. When a person disagrees with the determination of the Commissioner, he may apply, in writing, for a variance from rules 11 MCAR 1.4092 to 11 MCAR 1.4098.

p.10

JPS:kjr

Board of Optometry

Notice of Intent to Solicit Outside Opinions and Information Regarding Proposed Rules of the Minnesota Board of Optometry

Pursuant to Minn. Stat. § 15.0412, subd. 6, notice is hereby given that the Minnesota Board of Optometry wishes to solicit information and opinions from sources outside of the agency for the purpose of considering the adoption of rules relating to government data practices.

In pertinent part, the Minnesota Government Data Practices Act, Minn. Stat. § 15.1611 *et seq.*, provides that the responsible authority in every state agency shall:

1. Establish procedures to insure that requests for government data are received and complied with in an appropriate and prompt manner. Minn. Stat. § 15.1621, subd. 2.

2. Establish procedures to assure that all data on individuals is accurate, complete, and current for the purposes for which it was collected. Minn. Stat. § 15.163, subd. 5.

3. Establish appropriate security safeguards for all records containing data on individuals. *Id.* In addition, every state agency is to have procedures for access by data subject to public or private data on individuals. Minn. Stat. § 15.163, subd. 8.

If adopted, the rules in question would seek formally to establish the above-referenced procedures and safeguards for the Minnesota Board of Optometry.

Any persons desiring to submit data or views on these subjects should address their comments, whether written or oral, to:

Leo A. Meyer, OD
Minnesota Board of Optometry
Minnesota Department of Health Building
717 Delaware Street Southeast
Minneapolis, Minnesota 55440
Telephone: (612) 296-5544

All written submissions will become part of the record in any subsequent hearing.

September 27, 1980

Leo A. Meyer, OD
Executive Secretary

Department of Public Safety
Driver and Vehicle Services Division

Notice of Intent To Solicit Outside Information and Opinions for Proposed Rules on Physical and Mental Qualifications on Drivers Licenses

The Minnesota Department of Public Safety is considering proposing the adoption of rules governing standards for the administration of the drivers license laws pertaining to physical and mental qualifications.

These rules were proposed, came up for hearing and were withdrawn. They were published in the April 14, 1980 issue of the *State Register*, (4 SR 1633-1637). The department is contemplating completely revising those rules.

Pursuant to Minn. Stat. § 15.0412, subd. 6, the department is soliciting information and opinions from all interested persons and groups who wish to participate. Data, information or views on the subject stated above may be submitted by October 27, 1980 in writing to:

Gary Cunningham
Research and Development Specialist
161 Transportation Building
St. Paul, MN 55155

John P. Sopsic
Commissioner of Public Safety

STATE OF MINNESOTA

DEPARTMENT OF PUBLIC SAFETY

In the Matter of the Proposed Adoption of Rules of the State Department of Public Safety Governing Standards for Administration of Driver License Laws Pertaining to Physical or Mental Qualifications, 11 MCAR § 1.4092-1.4099.

ORDER ADOPTING RULES

The above-entitled matter came on for hearing before Hearing Examiner Jon L. Lunde on the 28th day of May, 1981, at 9:00 a.m., in Room G-18, Transportation Building, John Ireland Blvd., St. Paul, Minnesota, after proper notice required by Minnesota Statutes Section 15.0412 was served upon all persons, associations, and other interested groups registered with the State Department of Public Safety for that purposed.

After affording interested persons an opportunity to present written and oral data, statements, and arguments, hearing all of the testimony, considering all of the evidence adduced and upon the records, files, and proceedings herein and applicable statutory standards or criteria, and confirming the need for and reasonableness of the above-captioned rules,

NOW, THEREFORE, IT IS ORDERED that the above-identified rules are adopted this 26 day of August, 1981, pursuant to authority vested in me by Minnesota Statutes Sections 171.01 to 171.32.

STATE OF MINNESOTA

John P. Sopsic By K. A. Dirkswager

JOHN P. SOPSIC
COMMISSIONER OF PUBLIC SAFETY

RECEIVED
APR 30 1981
ADMINISTRATIVE
HEARINGS

Department of Public Safety
Driver & Vehicle Services Division

In the matter of the Proposed Adoption of Rules of the State Department of Public Safety Governing Standards for Administration of Driver License Laws Pertaining to Physical or Mental Qualifications, 11 MCAR 1.4092-1.4099.

NOTICE OF HEARING

Notice is hereby given that a public hearing will be held pursuant to Minnesota Statutes Section 15.0412, Subdivision 4, in the above entitled matter, in Room G-18 Transportation Building, John Ireland Boulevard, St. Paul, MN 55155, on May 28, 1981, commencing at 9:00 A.M., and continuing until all persons or representatives of associations or other interested groups have had an opportunity to be heard concerning adoption of the proposed rules captioned above by submitting either oral or written data, statement or arguments. Written materials may be submitted by mail to Jon Lunde , Office of Hearing Examiners, Room 300, 1745 University Avenue, St. Paul, MN 55104, either before the hearing or within 5 working days after the close of the hearing (the hearing examiner may extend the written comment period up to 20 calendar days at the hearing). The proposed rules are subject to change as a result of the rule hearing process. The department therefore strongly urges those who may potentially be affected by the substance of the proposed rules to participate in the hearing process.

The Commissioner proposes to adopt rules relating to the following matters: The proposed rules pertain to the administration of provisions of Minnesota Statutes Chapter 171 which are related to the granting, denying, restricting, suspending, revoking or cancelling of drivers' licenses of persons with physical or mental disabilities or diseases when the department's decision is related to the disability or disease. The disabilities or diseases dealt with in the proposed rules include: visual acuity, diabetes, mental illness and conditions resulting in loss of consciousness or voluntary control. The proposed rules include the criteria the department will use to determine the person's eligibility or ineligibility for a license pursuant to Minnesota Statutes Section 171.04 clauses (8) and (9).

The Department's authority to promulgate the proposed rules is contained in Minnesota Statutes Section 15.0412, subdivision 3, and chapter 171 generally.

One free copy of the proposed rules is available and may be obtained by writing to the Department of Public Safety (D.L. Rules), 211 Transportation Building, St. Paul, MN 55155. additional copies will be available at the door on the date of the hearings.

Any person may request notification of the date on which the Hearing Examiner's Report will be available, after which date the agency may not take any final action on the rules for a period of five working days. Any person may request notification of the date on which the hearing record has been submitted (or resubmitted) to the Attorney General by the agency. If you desire to be so notified, you may so indicate at the hearing. After the hearing, you may request notification by sending a written request to the hearing examiner (in the case of the Hearing Examiner's Report), or to the agency (in the case of the agency's submission or resubmission to the Attorney General).

DPS Exh. No. 8
File No. DPS-81-002
Date 5-28-81

Notice is hereby given that 25 days prior to the hearing, a Statement of Need and reasonableness will be available for review at the Department of Public Safety and at the Office of Hearing Examiners. The Statement of Need and Reasonableness will include a summary of all of the evidence and argument which the department anticipates presenting at the hearing, justifying both the need for and reasonableness of the proposed rules. Copies of the Statement of Need and Reasonableness may be obtained from the Office of Administrative Hearings at a minimal charge. 9

The department estimates that there will be no cost to local public bodies in the state to implement the rules for the two years immediately following their adoption, within the meaning of Minn. Stat. 15.0412, Subd. 7 (1980). 10

Please be advised that Minnesota Statutes, Chapter 10A, requires each lobbyist to register with the State Ethical Practices Board within five days after he or she commences lobbying. Minnesota Statutes Section 10A.01, Subd. 11 (1980) defines a lobbyist as any individual: (a) engaged for pay or other consideration, or authorized by another individual or association to spend money, who spends more than five hours in any month or more than $250, not including his own travel expenses and membership dues, in any year, for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials; or (b) who spends more than $250, not including his own traveling expenses and membership dues, in any year, for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials. The Statute provides certain exceptions. Questions should be directed to Ethical Practices Board, 41 State Office Building, St. Paul, MN 55155, telephone (612) 296-5615. 6

The rule hearing process is governed by Minnesota Statutes Sections 15.0411 through 15.0417 and Section 15.052 and by 9 MCAR Sections 2.101 through 2.113 (Minnesota Code of Agency Rules). Questions relating to the rule hearing process and procedures may be directed to the Hearing Examiner, Jon Lunde, 296-5938. 11

STATE OF MINNESOTA

4-8-81
DATED

COMMISSIONER OF PUBLIC SAFETY

RECEIVED
APR 30 1981
ADMINISTRATIVE
HEARINGS

STATE OF MINNESOTA

COUNTY OF RAMSEY

In the Matter of the Proposed Adoption of Rules of the State Department of Public Safety Governing Standards for Administration of Driver License Laws Pertaining to Physical or Mental Qualifications

AFFIDAVIT OF MAILING

Judy Larkin, being first duly sworn, deposes and says:

That on the 16th day of April, 1981, at the City of St. Paul, County of Ramsey, State of Minnesota, she served the Notice of Hearing by depositing in the State of Minnesota Central Mail System for first class mailing, a copy thereof, properly enveloped, with postage prepaid, on all persons and associations who have requested that their names be placed on file with the State Department of Public Safety for the purpose of receiving notice of the proposed adoption of rules by this department.

Judy Larkin

Subscribed and sworn to before me

this 20 day of April,

1981.

Margaret J Barry

MARGARET JEAN BARRY
Notary Public, Ramsey County, Minn.
My Commission Expires
Aug. 19, 1981

DPS Exh. No. 11
File No. DPS-81-602
Date 5-28-81

RECEIVED
APR 30 1981
ADMINISTRATIVE
HEARINGS

STATE OF MINNESOTA

COUNTY OF RAMSEY

In the Matter of the Proposed Adoption of Rules of the State Department of Public Safety Governing Standards for Administration of Driver License Laws Pertaining to Physical or Mental Qualifications

CERTIFICATE

I hereby certify that the list of persons, associations, and other interested groups who have requested, pursuant to Minn. Stat. 15.0412, subd. 4, that their names be placed on file with and maintained by the State Department of Public Safety for the purpose of receiving notice of the proposed adoption of rules by this department is accurate and complete as of 9:00 A.M., this 16th day of April, 1981.

Diane K. Hamilton

DPS Exh. No. 10
File No. DPS-81-002
Date 5-28-81

RECEIVED
APR 30 1981
ADMINISTRATIVE
HEARINGS

PROPOSED RULES

Pursuant to Minn. Laws of 1980, § 15.0412, subd. 4h, an agency may propose to adopt, amend, suspend or repeal rules without first holding a public hearing, as long as the agency determines that the rules will be noncontroversial in nature. The agency must first publish a notice of intent to adopt rules without a public hearing, together with the proposed rules, in the *State Register*. The notice must advise the public:

1. that they have 30 days in which to submit comment on the proposed rules;
2. that no public hearing will be held unless seven or more persons make a written request for a hearing within the 30-day comment period;
3. of the manner in which persons shall request a hearing on the proposed rules;

and

4. that the rule may be modified if modifications are supported by the data and views submitted.

If, during the 30-day comment period, seven or more persons submit to the agency a written request for a hearing of the proposed rules, the agency must proceed under the provisions of § 15.0412, subds. 4 through 4g, which state that if an agency decides to hold a public hearing, it must publish in the *State Register* a notice of its intent to do so. This notice must appear at least 30 days prior to the date set for the hearing, along with the full text of the proposed rules. (If the agency has followed the provisions of subd. 4h and has already published the proposed rules, a citation to the prior publication may be substituted for republication.)

Pursuant to Minn. Stat. § 15.0412, subd. 5, when a statute, federal law or court order to adopt, suspend or repeal a rule does not allow time for the usual rulemaking process, temporary rules may be proposed. Proposed temporary rules are published in the *State Register*, and for at least 30 days thereafter, interested persons may submit data and views in writing to the proposing agency.

Department of Public Safety
Driver & Vehicle Services Division

Proposed Rules Governing Standards for Administration of Driver License Laws Pertaining to Physical or Mental Qualifications [11 MCAR §§ 1.4092-1.4099]

Notice of Hearing

Notice is hereby given that a public hearing will be held pursuant to Minnesota Statutes, § 15.0412, subd. 4, in the above entitled matter, in Room G-18 Transportation Building, John Ireland Boulevard, St. Paul, MN 55155, on May 28, 1981, commencing at 9:00 a.m., and continuing until all persons or representatives of associations or other interested groups have had an opportunity to be heard concerning adoption of the proposed rules captioned above by submitting either oral or written data, statement or arguments. Written materials may be submitted by mail to Jon Lunde, Office of Hearing Examiners, Room 300, 1745 University Avenue, St. Paul, MN 55104, either before the hearing or within 5 working days after the close of the hearing (the hearing examiner may extend the written comment period up to 20 calendar days at the hearing). The proposed rules are subject to change as a result of the rule hearing process. The department therefore strongly urges those who may potentially be affected by the substance of the proposed rules to participate in the hearing process.

The commissioner proposes to adopt rules relating to the following matters: The proposed rules pertain to the administration of provisions of Minnesota Statutes Chapter 171 which are related to the granting, denying, restricting, suspending, revoking or cancelling of drivers' licenses of persons with physical or mental disabilities or diseases when the department's decision is related to the disability or disease. The disabilities or diseases dealt with in the proposed rules include: visual acuity, diabetes, mental illness and conditions resulting in loss of consciousness or voluntary control. The proposed rules include the criteria the department will use to determine the person's eligibility or ineligibility for a license pursuant to Minnesota Statutes, § 171.04 clauses (8) and (9).

The department's authority to promulgate the proposed rules is contained in Minnesota Statutes, § 15.0412, subd. 3, and ch. 171 generally.

One free copy of the proposed rules is available and may be obtained by writing to the Department of Public Safety (D.L. Rules), 211 Transportation Building, St. Paul, MN 55155. Additional copies will be available at the door on the date of the hearings.

Any person may request notification of the date on which the Hearing Examiner's Report will be available, after which date the agency may not take any final action on the rules for a period of five working days. Any person may request notification of the date on which the hearing record has been submitted (or resubmitted) to the Attorney General by the agency. If you desire

KEY: PROPOSED RULES SECTION — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." ADOPTED RULES SECTION — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language.

DPS Exh. No. 6
File No. DPS-81-002
Date 5-28-81

to be so notified, you may so indicate at the hearing. After the hearing, you may request notification by sending a written request to the hearing examiner (in the case of the Hearing Examiner's Report), or to the agency (in the case of the agency's submission or resubmission to the Attorney General).

Notice is hereby given that 25 days prior to the hearing, a Statement of Need and Reasonableness will be available for review at the Department of Public Safety and at the Office of Hearing Examiners. The Statement of Need and Reasonableness will include a summary of all of the evidence and argument which the department anticipates presenting at the hearing, justifying both the need for and reasonableness of the proposed rules. Copies of the Statement of Need and Reasonableness may be obtained from the Office of Administrative Hearings at a minimal charge.

The department estimates that there will be no cost to local public bodies in the state to implement the rules for the two years immediately following their adoption, within the meaning of Minn. Stat. § 15.0412, subd. 7 (1980).

Please be advised that Minnesota Statutes, ch. 10A, requires each lobbyist to register with the State Ethical Practices Board within five days after he or she commences lobbying. Minnesota Statutes § 10A.01, subd. 11 (1980) defines a lobbyist as any individual: (a) engaged for pay or other consideration, or authorized by another individual or association to spend money, who spends more than five hours in any month or more than $250, not including his own travel expenses and membership dues, in any year, for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials; or (b) who spends more than $250, not including his own traveling expenses and membership dues, in any year, for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials. The Statute provides certain exceptions. Questions should be directed to Ethical Practices Board, 41 State Office Building, St. Paul, MN 55155, telephone (612) 296-5615.

The rule hearing process is governed by Minnesota Statutes, §§ 15.0411 through 15.0417 and § 15.052 and by 9 MCAR §§ 2.101 through 2.113 (Minnesota Code of Agency Rules). Questions relating to the rule hearing process and procedures may be directed to the Hearing Examiner, Jon Lunde, phone 296-5938.

John P. Sopsic
Commissioner of Public Safety

Rules as Proposed (all new material)

Chapter Nine: Standards for Administration of Driver License Laws Pertaining to Physical or Mental Qualifications

11 MCAR § 1.4092 Purpose and scope.

A. Purpose. This chapter is to set out general standards for effective administration of the driver licensing statutes relating to the issuance, restriction or denial of driving privileges with respect to persons having physical or mental disabilities under Minn. Stat. §§ 171.04; 171.13 and 171.14.

B. Scope. These rules are intended to be confined within the framework of, and consistent with, the provisions of Chapter 171 of Minnesota Statutes.

C. Definitions. When used in these rules, the following phrase shall have the following meaning: "Good cause to believe": grounds put forth in good faith which are not arbitrary, irrational, unreasonable or irrelevant and which are based on at least one of the following sources:

1. written information from an identified person
2. facts supplied by the driver or applicant
3. facts of which the commissioner or his employees or agents have personal knowledge

11 MCAR § 1.4093 Vision.

A. General. Every applicant shall submit to a vision screening or examination. The screening device, designed to screen 20/40 or better corrected vision, shall be of a type accepted by the American Medical Association.

The purpose of the vision screening is:

1. To screen each applicant to guarantee that those individuals with substandard vision are required to take the necessary steps required to achieve the best vision possible.

2. To deny driving privileges to those whose vision is likely to interfere with the safe operation of motor vehicles in traffic.

B. Corrective lenses not required. Except as otherwise provided herein, no corrective lenses will be required where the applicant:

1. scores 20/40 or better, with either one or both eyes, without corrective lenses;

2. has one eye, but scores 20/40 or better, without corrective lenses; or

3. has the recommendation of an eye specialist that corrective lenses not be worn. In these cases, the commissioner shall either require the applicant to be examined further, to impose suitable restrictions upon his driving privileges or both.

C. Corrective lens requirement. Corrective lenses shall be required in all cases when:

1. The applicant scores less than 20/40 with either one or both eyes unassisted but scores 20/40 or better with corrective lenses;

2. The applicant submits a physician's statement, in a form as may be prescribed by the commissioner, indicating that the applicant scores 20/40 or better with either eye, or both eyes together, but where the physician recommends that the applicant wear corrective lenses; or

3. The applicant is blind in one eye and scores less than 20/40 with the other eye unassisted, but scores 20/40 or better with corrective lenses.

D. Vision examinations. Any applicant shall be required to submit a vision report from a physician in a form as prescribed by the commissioner when:

1. The applicant disagrees with the results of the screening conducted by any driver examiner;

2. The applicant has cataracts;

3. The driver examiner is unable to determine the extent of the applicant's vision;

4. Any court or police officer has recommended that the applicant's vision be examined;

5. The commissioner determines, in some other situation, when he has good cause to believe that an examination is warranted;

6. The applicant has strabismus; or

7. The applicant has double vision

E. Vision restricted licenses. Applicants who score 20/50 or less corrected vision with either one usable eye or with two eyes shall, if otherwise eligible, be issued a restricted license to permit driving subject to the following restrictions:

1. Speed Restrictions

20/50	- - -	55 miles per hour
20/60	- - -	50 miles per hour
20/70	- - -	45 miles per hour

When the applicant scores 20/80 to 20/100 corrected vision, the application will be referred to the Chief Evaluator who shall determine whether a restricted license can be issued and the kinds of restrictions which are necessary to ensure that the applicant does not pose an unreasonable safety risk to himself or others. When the applicant scores 20/100 or less corrected vision, or is known to be receiving assistance for the blind, all privileges shall be denied and any existing license cancelled under authority of Minn. Stat. §§ 171.14 and 171.04 (9).

2. Restriction as to type of road. Any applicant subject to speed restrictions under Paragraph E.1. may also be restricted to those roads having a maximum speed limit equal to the maximum speed limit imposed upon the applicant, if the commissioner determines that the restriction is necessary for the safety of the applicant and the public. Any person limited to a maximum speed of 45 m.p.h. or less shall be restricted from driving on any freeway, expressway, or limited access highway with a speed limit of more than 45 m.p.h.

3. Area restrictions. Any applicant who scores 20/50 or less corrected vision with both eyes may be restricted to driving within an area to be determined by the commissioner, if the commissioner determines that the restriction is necessary for the safety of the applicant and the public.

KEY: PROPOSED RULES SECTION — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." ADOPTED RULES SECTION — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language.

F. Other situations. Any vision readings or problems not covered by the above general standards shall be referred to the Chief Evaluator, who shall determine whether a restricted license can be issued and the kinds of restrictions which are necessary to ensure that the applicant does not pose an unreasonable safety risk to himself or others.

11 MCAR § 1.4094 Loss of consciousness or voluntary control.

A. General. This rule applies to all drivers and applicants for driving privileges who suffer from any paroxysmal disturbances of consciousness, including, but not limited to, epilepsy. Any person suffering from narcolepsy or syncope of any cause, as well as any other type of periodic or episodic loss of consciousness or voluntary control, is included. This rule applies regardless of whether the driver or applicant has an "aura" or warning of imminent seizure or attack or whether the driver or applicant has only had nocturnal attacks, and no exceptions shall be made for such drivers or applicants.

B. Physician's report. When the commissioner has good cause to believe that a driver or applicant suffers from any of the periods of unconsciousness mentioned in A. above, a physician's report in such form as the commissioner may prescribe shall be required within 30 days or within such reasonable time that the person may require to obtain the report from the physician. This report shall include a sworn statement from the driver or applicant as to the date of his last period of unconsciousness.

C. Criteria for cancellation. If this report is not filed, or, if upon review of the doctor's report the commissioner finds that the individual has suffered from periods of unconsciousness, with the last period of unconsciousness occurring within the last 12 months, all driving privileges shall be cancelled under the authority of Minn. Stat. § 171.14 and denied under authority of Minn. Stat. § 171.04 (9). The person shall not be issued any driving privileges until the commissioner finds that the person is competent to drive safely.

D. Criteria for reinstatement. For reinstatement the commissioner shall require a satisfactory doctor's report and a satisfactory sworn statement from the person stating the date of the last period of unconsciousness and that it occurred at least 12 months previously.

E. Review of driver's condition. Except as otherwise provided below, any driver suffering from medical conditions subject to this rule shall be required to submit an annual physician's statement in the form prescribed by the commissioner, with respect to his medical history, present situation, and the prognosis with respect to the applicant's ability to operate a motor vehicle with safety to himself and others.

1. When the commissioner has good cause to doubt the stability of the driver's condition, the commissioner shall require physician's statements every six months, or at such shorter intervals as recommended by the reporting physician.

2. After three successive annual physician's statements indicating no episodes of loss of voluntary control, while on medication, the commissioner shall require a physician's report every four years, unless the physician recommends more frequent reports.

4. When the physician's statement indicates that an episode of loss of voluntary control resulted from a change or removal of medication on the physician's orders, the commissioner will not cancel the privilege to drive. However, a physician's statement shall be required every six months until the person has been episode-free for not less than one year.

5. When the physician reports that there has been only one such episode, the procedure shall be as indicated in Paragraph E 4. above.

11 MCAR § 1.4095 Diabetes.

A. General. When the commissioner has good cause to believe that a driver or applicant has diabetes, or has experienced a loss of voluntary control due to either insulin reaction or acidosis, a physician's report shall be required within 30 days or within such reasonable time that the person may require to obtain the report from the physician. If the physician's statement is not filed, or, if upon review of the report from the physician the commissioner finds that a person cannot drive safely, all driving privileges shall be cancelled under authority of Minn. Stat. § 171.14 and denied under authority of Minn. Stat. § 171.04 (9). The person shall not be issued any driving privileges until the commissioner finds that the person is competent to drive safely. For reinstatement, the commissioner shall require a satisfactory physician's report, demonstrating the individual is competent to drive safely.

B. Insulin control. When the driver or applicant uses insulin to control diabetes, a physician's statement shall be required annually in the form prescribed by the commissioner. If the person remains free of episodes of loss of voluntary control due to insulin reaction or acidosis, for a period of 5 years, the physician's report shall be required every two years, unless the physician recommends more frequent reports. If the person remains episode-free for three of these two-year review periods, the physician's report shall be required every four years unless the physician recommends more frequent reports. If there is an episode of loss of voluntary control, the physician's report shall be required every six months, until the person has been episode-free for one year.

11 MCAR 1.4096 Mental illness or deficiency.

For the purposes of this section, good cause to believe exists only if the commissioner has:

1. information that a person has operated a vehicle in an unsafe manner, or

2. information that a person lacks judgment and coordination to safely operate a vehicle based on competent medical authority, or

3. facts supplied by the driver or applicant

When the commissioner has good cause to believe that a person is mentally ill, incompetent or deficient, and that the mental illness, incompetency or deficiency will affect the person in a manner to prevent him from exercising reasonable and ordinary control over a motor vehicle while operating it upon the highways, a physician's statement, in such form as the commissioner may prescribe, shall be required within 30 days or in such reasonable time that a person may require to obtain a physician's statement. If the physician's statement is not filed, or, if upon review of the report from the physician the commissioner finds that a person cannot drive safely, all driving privileges shall be cancelled under authority of Minn. Stat. § 171.14 and denied under authority of Minn. Stat. § 171.04 (5) or (9). The person shall not be issued any driving privileges until the commissioner finds that the person is competent to drive safely.

For reinstatement, the commissioner shall require a satisfactory statement from any institution in which the person has been treated, from any treating physician, or from any competent medical authority acceptable to the commissioner, demonstrating that the individual is competent to drive safely.

11 MCAR § 1.4097 Miscellaneous physical or mental conditions.

A. When the commissioner has good cause to believe that any of the situations listed in B. exist, and would adversely affect the driver's or applicant's ability to drive safely, a physician's statement in such form as the commissioner may prescribe, shall be required within 30 days, or in such reasonable time that a person may require to obtain a physician's statement. If the physician's statement is not filed, or, if upon review of the statement the commissioner finds that the person cannot drive safely, all driving privileges shall be cancelled under authority of Minn. Stat. § 171.13 (4) or Minn. Stat. § 171.14 and denied under authority of Minn. Stat. § 171.04 (9).

The person shall not be issued any driving privileges until the commissioner finds that the person is competent to drive safely.

B. Situations covered by paragraph A. are:

1. Use of any medication, whether or not prescribed.

2. Any disease that raises reasonable doubts as to the person's ability to drive safely.

3. Use of alcohol or controlled substances.

4. Lack of physical control, such as that manifested by fainting or dizzy spells, blackouts or periods of unconsciousness.

5. Lack of physical endurance, such as that manifested by a person subject to fatigue, exhaustion, nervous tension, or adverse reaction to monotony.

6. Abnormal reflexes, such as those manifested by persons suffering from cerebral palsy, multiple sclerosis, Parkinson's disease, or similar conditions.

C. When the commissioner has good cause to doubt the adequacy of the driver's or applicant's ability to safely operate a vehicle under the conditions listed in D., a driver's license examination shall be required within 30 days or within such reasonable time that a person may need to obtain a driver's test. If the driver's test is not satisfactorily completed within 30 days, or in such reasonable time as the person may require to obtain an examination, all driving privileges shall be cancelled under the authority of Minn. Stat. § 171.13 and denied under the authority of Minn. Stat. § 171.04.

For reinstatement, the commissioner shall require proof of satisfactory completion of the driver's test.

D. Conditions covered by paragraph C. are:

1. driving procedures

2. judgment of space, time and motion

KEY: PROPOSED RULES SECTION — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." ADOPTED RULES SECTION — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language.

3. physical strength to operate a vehicle's controls

4. physical condition to operate a vehicle

11 MCAR § 1.4098 Other restricted licenses.

A. When a person has failed, after three attempts, to pass the driver's license examination, but can establish a genuine need to be able to drive, he may apply for a restricted license.

All such applications shall be referred to the Chief Driver Evaluator. The applicant must undergo examination by an examining supervisor, who shall determine the risk involved, and forward his/her written recommendations, including, when applicable, suggested basic restrictions, to the Chief Driver Examiner for forwarding to the Chief Driver Evaluator. The Chief Driver Evaluator shall review the entire record and determine whether any driving privileges may be authorized.

B. Any restricted licenses issued shall be subject to cancellation whenever the commissioner determines that the person has violated the restrictions imposed. The commissioner may notify local law enforcement agencies of the issuance of any special restricted license and of the restrictions involved. Any report of a violation of the restrictions shall be referred to the Chief Driver Evaluator for consideration. Any conviction indicating a violation of the restrictions shall result in cancellation. After cancellation no driving privileges may be allowed until the commissioner determines that the licensee can be trusted to operate within the restrictions imposed. Any reinstatement may be conditioned upon compliance with additional restrictions for such period as the commissioner may direct.

11 MCAR § 1.4099 Medical review board.

A. A medical review board shall be established for each of the various general types of physical and mental qualifications dealt with by these rules. Each medical review board shall consist of one or more licensed physicians nominated by the state medical association. The physicians shall preferably be specialists in the area to which the problem relates.

B. When a person disagrees with the determination of the commissioner, he may apply, in writing, for a variance from rules to . Any applicant applying for a variance shall have his treating physician or physicians provide the Commissioner with a complete medical history relating to the condition in question, together with good medical reasons why a variance should be granted. The commissioner shall then forward to the appropriate medical review board all information submitted by the applicant together with the commissioner's records relating to the matter. Each physician on the review board shall review the file and make his recommendation to the chairman of the review board, who shall communicate the recommendation of the board, whether unanimous or divided, to the commissioner.

Upon receipt of the recommendation of the review board, the commissioner shall reconsider the application, take whatever action he then deems appropriate, inform the driver or the applicant of his decision, and, if the decision differs from the recommendation of the review board, of the reasons for the decision.

This decision shall be reached and the applicant informed of the decision within 60 days of the request for a variance.

Board of Teaching

Proposed Rule Governing Procedures for the Issuance of Life Licenses

Notice of Hearing

A public hearing concerning the proposed rule will be held at Veterans Service Building, Room D, 20 West 12th Street and Columbus Avenue, St. Paul, Minnesota 55155 on May 30, 1981, commencing at 9:00 a.m. The proposed rule may be modified as a result of the hearing process. Therefore, if you are affected in any manner by the proposed rule, you are urged to participate in the rule hearing process.

Following the agency's presentation at the hearing all interested or affected persons will have an opportunity to ask questions and make comments. Statements may be made orally and written material may be submitted. In addition, whether or not an appearance is made at the hearing, written statements or material may be submitted to Richard C. Luis, Hearing Examiner, Room 300, 1745 University Avenue, St. Paul, MN 55104, telephone (612) 296-8114 either before the hearing or within five working days after the close of the hearing. The hearing examiner may, at the hearing, order that the record be kept open for a longer period not to exceed 20 calendar days. The rule hearing procedure is governed by Minn. Stat. §§ 15.0411-15.0417 and 15.052, and by 9 MCAR §§ 2.101-2.113 (Minnesota Code of Agency Rules). If you have questions about the procedure, call or write the hearing examiner.

Notice is hereby given that 25 days prior to the hearing, a Statement of Need and Reasonableness will be available for review at the agency and at the Office of Administrative Hearings. This Statement of Need and Reasonableness will include a summary of all the evidence and argument which the agency anticipates presenting at the hearing justifying both the need for and the

STATE OF MINNESOTA

DEPARTMENT OF PUBLIC SAFETY

In the Matter of the Proposed Adoption of Rules of the State Department of Public Safety Governing Standards for Administration of Driver License Laws Pertaining to Physical or Mental Qualifications, 11 MCAR § 1.4092-1.4099.

FINDINGS OF FACT AND CONCLUSIONS

The above-entitled matter came on for hearing before Hearing Examiner Jon L. Lunde on the 28th day of May, 1981, at 9:00 a.m. in Room G-18, Transportation Building, John Ireland Blvd., St. Paul, Minnesota, after proper notice required by Minnesota Statutes § 15.0412 was served upon all persons, associations and other interested groups registered with the State Department of Public Safety for that purpose.

After affording interested persons an opportunity to present written and oral data, statements and arguments, having considered all of the evidence adduced upon the records, files, and proceedings herein, I find the following:

The Findings of Fact and Conclusions of the attached report of the Hearing Examiner in this matter (file no. DPS-81-002-JL) are, except as otherwise noted hereinafter, hereby adopted by reference. In addition, I make the additional Findings of Fact and Conclusions:

FINDINGS OF FACT

1. The following is added to Finding of Fact No. 15:

Some regulation of drivers with narcolepsy is necessary. This regulation could be accomplished either as proposed under MCAR § 1.4094 or on a case by case basis under 11 MCAR § 1.4097 A and B. Either approach would be reasonable. However, based

upon all the evidence in the record, regulation of narcolepsy under 11 MCAR § 1.4097 A and B appears to be the preferable approach. Therefore the proposed rules have been amended to delete narcolepsy from 11 MCAR § 1.4094. Persons with narcolepsy who pose a hazard to the motoring public can still be adequately regulated pursuant to 11 MCAR § 1.4097 A and B.

2. The following is substituted for the second paragraph of Finding of Fact No. 21:

This section as proposed did not require the Department to inform an applicant of the reasons why a variance application is granted, or state the standards applicable to the granting of a variance, as required by Minn. Stat. § 15.0412, subd. 1a (1980), which became effective on August 1, 1981. This has been changed in the rules as adopted.

The second paragraph of Part B has been amended to require the Commissioner to state reasons for the granting or denial of all variance requests and not merely the reasons for action different from the Medical Review Board's recommendation. This addition to the rule is found to be reasonable. While it may appear to be relatively self-evident that when the Commissioner follows the Board's recommendation he is relying upon their expert advice, there is no disadvantage in giving this as the explicit reason for the decision, along with any other reasons that there may be for the decision.

In addition, the standards applicable to the granting of a variance have been set out. The standard has been phrased in terms of the ability of the person seeking a variance to operate a motor vehicle safely, with reasonable and ordinary control, and without posing a danger inimical to public safety or welfare. Minn. Stat. § 171.04(8) and (9) (1980). This is found to be a reasonable standard

for granting a variance. These rules are intended to protect the motoring public by restricting or cancelling the driver's licenses of persons who pose a potential hazard. If a person comes within the provisions of these rules but poses no potential hazard, there is no reason to cancel or restrict his license and a variance can be granted. In addition, as required by the statute, the rule now states that variances from statutory standards are not available.

CONCLUSIONS

1. The following conclusion is substituted for Conclusion 3:

3. That the Department has demonstrated its statutory authority to adopt the proposed rules and has fulfilled all other substantive requirements of law or rule within the meaning of Minn. Stat. §§ 15.0412, subd. 4e and 15.052, subd. 3(4) (i) and (ii) (1980).

2. The following conclusion is substituted for Conclusion 5:

5. That the amendments and additions to the proposed rules that have been made after publication of the proposed rules in the State Register do not result in rules which are substantially different from the proposed rules as published in the State Register within the meaning of Minn. Stat. § 15.0412, subd. 4d (1980) and 9 MCAR §§ 2.110A and 2.111 (1980 Ed.).

3. The following conclusion is substituted for Conclusion 6:

6. That the amendments to the proposed rules that have been made after the receipt of the report of the Hearing Examiner are based upon the report and public comments submitted to the Hearing Examiner and are consistent with the suggestions contained in the report.

4. That the following conclusion is substituted for Conclusion 7:

7. That due to Conclusion 3 of the report of the Hearing Examiner, these Findings of Fact and Conclusions have been submitted to the Chief Hearing Examiner for his approval pursuant to Minn. Stat. § 15.0412, subd. 4d (1980).

5. That Conclusion 9 is deleted.

STATE OF MINNESOTA

JOHN P. SOPSIC
COMMISSIONER OF PUBLIC SAFETY

DPS-81-002-JL

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE DEPARTMENT OF PUBLIC SAFETY

In the Matter of the Proposed Adoption of Rules of the State Deaprtment of Public Safety Governing Standards for Administration of Driver License Laws Pertaining to Physical or Mental Qualifications, 11 MCAR SS 1.4092-1.4099.

REPORT OF THE CHIEF HEARING EXAMINER

The above-entitled matter came on for review by the Chief Hearing Examiner pursuant to the provisions of Minn. Stat. § 15.0412, subd. 4d (1980) which provides in part:

> If the [hearing examiner's] report contains a finding that the proposed rule is substantially different from that which was proposed at the public hearing, or that the agency has not met the requirements of section 15.0412, subdivisions 4 through 4f, it shall be submitted to the chief hearing examiner for approval. If the chief hearing examiner approves the finding of the hearing examiner, he shall advise the agency of actions which will correct the defects, and the agency shall not adopt the rule until the chief hearing examiner determines that the defects have been corrected. If the chief hearing examiner determines that the need for and reasonableness of the rule has not been established pursuant to subdivision 4, clause (c), and if the agency does not elect to follow the suggested actions of the hearing examiner to correct that defect, then the agency shall submit the proposed rule to the legislative commission to review administrative rules for the commission's advice and comment. The agency shall not proceed to adopt the rule until it has received and considered the advice of the commission; provided, that the agency is not required to delay adoption longer than 30 days after the commission's receipt of the agency's submission.

Based upon a review of the record in this proceeding, the Chief Hearing Examiner hereby approves the Report of the Hearing Examiner in all respects and specifically as to any finding of substantial change or of failure to comply with Minn. Stat. § 15.0412, subd. 4-4f (1980) or of failure to establish need for and reasonableness of the proposed rule.

In order to correct the defects enumerated by the Hearing Examiner, the agency shall either take the action recommended by the Hearing Examiner or reconvene the rule hearing if appropriate. If the agency chooses to reconvene the rule hearing, it shall do so as if it is initiating a new rule hearing, complying with all substantive and procedural requirements imposed on the agency by law or rule.

If the agency chooses to take the action recommended by the Hearing Examiner, it shall, prior to submitting the rules to the Attorney General for review, submit to the Chief Hearing Examiner a copy of the rules as initially published in the State Register, a copy of the rules as proposed for final adoption in the form required by the State Register for final publication, and a copy of the agency's Findings of Fact and Order Adopting Rules. The Chief Hearing Examiner will then make a determination as to whether the defect in regard to substantial change and the requirements of Minn. Stat. § 15.0412, subd. 4-4f (1980) have been corrected.

Should the agency make changes in the rules other than those recommended by the Hearing Examiner, it shall also, prior to submitting the rule to the Attorney General, submit the complete record to the Chief Hearing Examiner for a review in regard to substantial changes.

Dated: June 19th, 1981.

DUANE R. HARVES
Chief Hearing Examiner

DPS-81-002-JL

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE DEPARTMENT OF PUBLIC SERVICE

In the Matter of the Proposed Adoption of Rules of the State Department of Public Safety Governing Standards for Administration of Drive License Laws Pertaining to Physical or Mental Qualifications, 11 MCAR § 1.4092-1.4099.

ORDER OF THE
CHIEF HEARING EXAMINER

WHEREAS, a hearing was held on May 28, 1981, before Jon L. Lunde, a Hearing Examiner of the State Office of Administrative Hearings, on the above-entitled matter in compliance with Minn. Stat. § 15.0412, subd. 4; and

WHEREAS, the Report of the Hearing Examiner made pursuant to Minn. Stat. § 15.052, subd. 3, was issued to the Department of Public Safety and;

WHEREAS, the Department of Public Safety has now determined to adopt rules pursuant to Minn. Stat. § 15.0412, subd. 4-4f; and

WHEREAS, the Department of Public Safety has submitted said rules to the Chief Hearing Examiner for review pursuant to Minn. Stat. §§ 15.0412, subd. 4e, and 15.052, subd. 4, and 9 MCAR § 2.111; and

WHEREAS, the Chief Hearing Examiner finds that the final proposed rules are not substantially different from those proposed at the public hearing and that the Department of Public Safety has cured the defects in the rules as required.

NOW, THEREFORE, upon receipt of this Order, the Department of Public Safety has the responsibility of submitting the complete hearing record and the rules as adopted by it to the Attorney General and to publish in the State Register, all pursuant to Minn. Stat. § 15.0412, subd. 4e and 4f.

Dated this 28th day of August, 1981.

Duane R. Harves

DUANE R. HARVES
Chief Hearing Examiner

STATE OF MINNESOTA

DEPARTMENT OF PUBLIC SAFETY

RECEIVED
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ADMINISTRATIVE
HEARINGS

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

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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

In the Matter of the Proposed Adoption of Rules of the State Department of Public Safety Governing Standards for Administration of Drivers License Laws Pertaining to Physical or Mental Qualifications, 11 MCAR § 1.4092 - 1.4099

STATEMENT OF COMPLIANCE WITH RULEMAKING PROCEDURES

I, Special Assistant Attorney General James B. Early, do hereby declare that I have examined the rules and all related documents and that, based on my examination and my personal familiarity with the applicable procedures, the Administrative Procedure Act, the rules of the Office of Administrative Hearings, and the rules of the Attorney General have been followed. Any exceptions are noted below.

James B. Early

JAMES B. EARLY
Special Assistant
Attorney General

Dated: Sept. 11, 1981

STATE OF MINNESOTA

COUNTY OF RAMSEY

In the Matter of the Proposed Adoption of Rules of the State Department of Public Safety Governing Standards for Administration of Driver Licensing Laws Pertaining to Physical or Mental Qualifications.

AFFIDAVIT OF MAILING NOTICE OF SUBMISSION TO THE ATTORNEY GENERAL

Diane Hamilton, being first duly sworn, deposes and says:

That on the 14th day of September, 1981, in the City of St. Paul, County of Ramsey, State of Minnesota, she served the attached Notice of Submission to the Attorney General by depositing in the State of Minnesota Central Mail System for United States mailing, a copy thereof, properly enveloped, with postage prepaid, to all persons and associations who requested notice that the rules in the above-entitled matter have been submitted to the Attorney General.

Diane Hamilton

Subscribed and sworn to before me

this 14 day of September,

1981.

Robert G. Knutson

ROBERT G. KNUTSON
Notary Public, Ramsey Co., Minn.
MY COMMISSION EXPIRES
April 11, 1983

STATE OF MINNESOTA

DEPARTMENT OF PUBLIC SAFETY

211 Transportation Building
St. Paul, Minnesota 55155

In the Matter of the Proposed Adoption of Rules of the State Department of Public Safety Governing Standards for Administration of Driver Licensing Laws Pertaining to Physical or Mental Qualifications.

NOTICE OF SUBMISSION TO THE ATTORNEY GENERAL

Pursuant to your request and in accordance with Minn. Stat. section 15.0412:

PLEASE TAKE NOTICE that the above-captioned rules have been submitted to the Office of the Attorney General on this date, September 14, 1981, for review as to form and legality. Pursuant to 1 MCAR section 1.206 C, the Attorney General will not approve the rules for at least 10 calendar days after receipt, to allow any person or association time to comment on the legality of the rules, after which that office will complete its review. If you desire to comment on the legality of the above-captioned rules, you should direct your comments to the Office of the Attorney General, G-25, State Administration Building, 50 Sherburne Avenue, St. Paul, Mn 55155, telephone (612) 296-7030. Please note that the above-cited rule of the Attorney General also provides that a copy of any written comments submitted to the Attorney General must be submitted simultaneously to this agency.

If you are interested in determining what changes, if any, were made in the proposed rules after the hearing, and before submission to the Attorney General, you may contact Ms Diane Hamilton at the above address.

Diane Hamilton

DPS-81-002-JL

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE DEPARTMENT OF PUBLIC SAFETY

In the Matter of the Proposed Adoption of Rules of the State Department of Public Safety Governing Standards for Administration of Driver License Laws Pertaining to Physical or Mental Qualifications, 11 MCAR §§ 1.4092-1.4099.

REPORT OF THE HEARING EXAMINER

The above-entitled matter came on for hearing before Jon L. Lunde, duly appointed Hearing Examiner, on Thursday, May 28, 1981, at 9:00 a.m. in Room G-18 of the State Transportation Building, John Ireland Boulevard, St. Paul, Minnesota, pursuant to an Order for Hearing dated March 26, 1981. This is a rulemaking proceeding conducted pursuant to Minn. Stat. Chapter 15 to determine whether the Department of Public Safety has authority to adopt the rules proposed and whether they are necessary and reasonable and may be adopted.

James Early, Special Assistant Attorney General, 515 Transportation Building, John Ireland Boulevard, St. Paul, Minnesota 55155, appeared as counsel on behalf of the Minnesota Department of Public Safety (hereinafter the "Department" or "DPS"). The Department's witnesses were Gary Cunningham, Research and Development Specialist, and Neil Werdal, Chief Evaluator, both of the Division of Driver and Vehicle Services.

Approximately 15 persons, excluding Departmental Staff, appeared at the hearing and seven of them signed the hearing register. The hearing continued throughout the morning until all interested persons present had had an opportunity to be heard. Subsequent to the close of the hearing, but before the expiration of the 20-day comment period ordered by the Hearing Examiner, four public comments and one Departmental comment were submitted to the Hearing Examiner and made a part of the record.

The Commissioner of Public Safety must wait at least five working days before taking any final action on the rules; during that period, this Report must be made available to all interested persons upon request.

Pursuant to the provisions of Minn. Stat. § 15.0412, subd. 4d (1980), this Report has been submitted to the Chief Hearing Examiner for his approval. If the Chief Hearing Examiner approves the findings of this Report, he will advise the Commissioner of actions which will correct the defects and the Commissioner may not adopt the rule until the Chief Hearing Examiner determines that the defects have been corrected. However, in those instances where the Chief Hearing Examiner identifies defects which relate to the issues of need or reasonableness, the Commissioner may either adopt the Hearing Examiner's recommendations to cure the defects or, in the alternative, if the Commissioner does not elect to adopt the recommendations, he may submit the proposed rule to the Legislative Commission to Review Administrative Rules for the Commission's advice and comment. Provisions relating to this submission to the Commission may be found in Minn. Stat. § 15.0412, subd. 4d (1980).

If the Commissioner elects to adopt the recommendations of the Hearing Examiner and makes no other changes and the Chief Hearing Examiner determines that the defects have been corrected, then the Commissioner shall submit the rule to the Attorney General for review of form and legality. If the Commissioner makes changes in the rule other than those recommended by the Hearing Examiner, then he shall submit the rule, with the complete record, to the Chief Hearing Examiner for a review of the changes before adopting it and submitting it to the Attorney General. Procedures relating to this subsequent review by the Chief Hearing Examiner are set forth in Minn. Stat. § 15.0412, subd. 4e (1980).

When the Commissioner submits the rule to the Attorney General, he shall give notice on the day of submission to all persons who requested that they be informed of the submission to the Attorney General.

Based upon all the testimony, exhibits and written comments, the Hearing Examiner makes the following:

FINDINGS OF FACT

Procedural Requirements

1. On March 27, 1981, the Department filed the following documents with the Chief Hearing Examiner:

(a) A copy of the proposed rules.
(b) The Order for Hearing.
(c) The Notice of Hearing proposed to be issued.
(d) A Statement of the number of persons expected to attend the hearing and estimated length of the Agency's presentation.

2. On Monday, April 20, 1981, more than 30 days prior to hearing, a Notice of Hearing and a copy of the proposed rules were published at 5 State Register 1631-1636.

3. On April 16, 1981, more than 30 days prior to hearing, the Department mailed the Notice of Hearing to all persons and associations who had registered their names with the Department for the purpose of receiving such notice.

4. On April 30, 1981, the Department filed the following documents:

(a) The Notice of Hearing as mailed.
(b) The Agency's certification that its mailing list was accurate and complete.
(c) The Affidavit of Mailing the Notice to all persons on the Agency's list.
(d) The Statement of Need and Reasonableness.
(e) The names of Departmental personnel who will represent the Agency at the hearing together with the names of any other witnesses solicited by the Agency to appear on its behalf.
(f) A copy of the State Register containing the proposed rules.

The documents were available for inspection at the Office of Administrative Hearings from the date of filing to the date of the hearing.

5. The record remained open through Wednesday, June 17, 1981 for the receipt of written comments and statements, the period having been extended by order of the Hearing Examiner to 20 calendar days following the hearing.

6. While no petition for the adoption of the rules involved was filed pursuant to Minn. Stat. § 15.0415 (1980), the Legislative Commission to Review Administrative Rules (LCRAR), pursuant to its authority in Minn. Stat. § 3.965, subd. 2 (1980), requested that the Department adopt rules stating the policies and procedures it would follow in implementing Minn. Stat. § 171.04, clauses 8 and 9. See Report of the Hearing Examiner, OAH Docket No. DPS-80-004-PR, dated

July 7, 1980. In response to that request, the Department undertook to adopt rules early in 1980. The initial hearing on those rules was held on May 15, 1980. As a result of that hearing, and the Report of the Hearing Examiner, the rules were withdrawn and re-fashioned. This Report concerns the Department's second attempt to adopt rules requested by LCRAR.

Statutory Authority

7. The Department cited no specific delegation of authority to it or to the Commissioner of the Department for the adoption of the rules involved. Instead, it cited Minn. Stat. Chapter 171, generally, which grants the Commissioner a great deal of discretion in the issuance of drivers' licenses, and the requirements of Minn. Stat. § 15.0412, subd. 3 (1978), which provides as follows:

> Each agency shall adopt rules setting forth the nature and requirements of all formal and informal procedures related to the administration of official agency duties to the extent that those procedures directly affect the rights of or procedures available to the public.

The internal policies and procedures of the Department in its administration of Minn. Stat. § 171.04(8) and (9), and other provisions of that chapter, do affect the rights of the public to obtain and hold drivers' licenses and, as such, those procedures must be adopted as rules under Minn. Stat. § 15.0412, subd. 3.

Minn. Stat. § 15.0412, subd. 3 (1980), not only authorizes the rules proposed by the Department but, in fact, requires that rules be adopted. Consequently, the need for the rules is clear. They are needed not only because applicable law requires their adoption, but they are needed on the basis of the general proposition that administrative agencies should formally announce the manner in which the discretion given to them will be exercised. Legal scholars uniformly recognize the necessity for administrative agencies with discretionary power to formally state, through rules, the manner in which that discretion will be exercised. See, 1 K. Davis, Administrative Law Treatise, § 6.16, p. 285-286 (1970 supp.), and 1 F. Cooper, State Administrative Law, p. 175 (1965).

Proposed Rules

The proposed rules deal generally with the Department's authority under Minn. Stat. §§ 171.04, 171.13 and 171.14, pertaining to the examination of licensed applicants and the restriction, denial or cancellation of the driving privileges of those individuals having physical or mental disabilities which render the issuance of a license to them unsafe. This general purpose is specified in § 1.4092 of the proposed rules, and that section is a necessary and reasonable introduction to the rules and a statement of their purpose. While that section does not specify which types of licenses are covered, it seems clear that all licenses specified in Minn. Stat. § 171.02, that is, Classes A, B and C, are included. In addition, restricted licenses such as those provided for in §§ 171.041 and 171.042 are no doubt subject to the same rules.

While various types of vehicles may be operated under Class A, B and C licenses, the rules do not distinguish between those classes or establish special qualifications for the drivers of any particular kind of vehicles, such as firefighting equipment, trucks, or motorcycles. Under Minn. Stat. § 171.02, subd. 2, the Commissioner has authority to further subdivide Classes A, B and

C and issue classified licenses accordingly but has not elected to do so for purposes of these rules. Except as is discussed below, there were no objections to the approach taken by the Department in applying uniform rules to all classes of vehicles and all types of vehicles, and the approach taken by the Department is determined to be necessary and reasonable.

8. Section 1.4092 C. contains the only definition adopted in the rules. It defines the circumstances when the Commissioner or the Department has "good cause to believe." Good cause to believe exists generally when written information is received from an identified person, when information has been supplied by the driver or applicant or when the Commissioner or his employees or agents have personal knowledge of information. Frank Conroy, Issue Vice President of the United Handicapped Federation, suggested that Part C.1. be amended by adding the word "reliable" to the identified persons supplying written information which would establish good cause for the Commissioner to believe a particular fact. Even in the issuance of search warrants, the reliability of an informer is not always required to be stated. State v. Lewis, 225 So. 2nd 170 (Fla. App.). Where the safety of the public is at issue, and constitutionally protected rights under the Fourth Amendment are not involved, it is not necessary that the persons from which information is obtained be "reliable." Consequently, the proposed definition of the phrase "good cause to believe" is necessary and reasonable. However, the Department can consider Mr. Conroy's suggested amendment and add the word "reliable" if it deems such a requirement proper. The Department could reasonably make that determination, and if the word were added, a substantial change in the rules would not result for purposes of 9 MCAR § 2.111.

no change p. 2.

9. Section 1.4093 pertains to the vision of drivers and drivers' license applicants. This section was not subject to any adverse public comment and its need and reasonableness was adequately demonstrated in the Department's Statement of Need and Reasonableness (hereinafter the "Statement"). Requirements as to vision generally provide, consistent with Minn. Stat. § 171.13 (1980), that each applicant must submit to a vision screening examination to determine those persons whose vision should be corrected or those persons who are unable to drive safely. The rule specifies, in Part B., when corrective lenses are not required, and in Part C., when corrective lenses are required. Where there are specified reasons for so requiring, Part D. requires vision examinations by applicants and a physician's report. Part E. specifies the speed restrictions that can be placed on applicants who score between 20/50 or 20/70 and specifies further restrictions as to type of roads such a driver may use and the geographical areas where that driver may drive. These requirements are all adequately supported in the Department's Statement.

10. Under Part D., applicants are required to submit a vision report from a physician if the applicant has cataracts, strabismus (inability to obtain binocular vision), or double vision. The rule does not specify the kinds of restrictions that can be placed on persons who have those conditions. Instead, persons who have those conditions must be referred to the Chief Evaluator to determine whether a restricted license can be issued to them and the kinds of restrictions which are necessary to ensure that the applicant does not pose an unreasonable risk to himself or others. The provisions of Part F. would also

cover any other vision-related problems or conditions not otherwise specifically covered by the rules. Although the rules do not mention tunnel vision or color blindness, there is nothing in the record to indicate that these two conditions require special treatment or occur with such frequency that certain minimum standards should be specified in the rules. Pursuant to Minn. Stat. § 171.13, subd. 1, drivers' licenses cannot be denied to an applicant solely on the grounds that the applicant's eyesight is deficient in color perception. Consistent with that mandate, the rules do not provide for a denial in such circumstances. However, the rules fail to address the issue whether restrictions on a license issued to an individual deficient in color perception are necessary or reasonable, even though denial is not authorized. Since there is nothing in the record indicating a need for specific standards where color blindness or tunnel vision is involved, the rule's failure to specifically mention those conditions or set standards for the issuance of licenses to persons with those conditions must be considered to be necessary and reasonable. However, if the Department has, in the past, adopted a general approach to restrictions on licenses to color-blind individuals, or individuals who have tunnel vision, it would be preferable for those standards to be specifically set forth in the rule rather than to be governed by the broad and unspecific authority of the Chief Evaluator to determine, ad hoc, the kinds of restrictions which should be imposed on such drivers.

11. Part F. provides for the referral of problems not specifically covered by the rules to the Chief Evaluator for determination whether a restricted license should be issued and the kinds of restrictions that are necessary for safety purposes. That Part is necessarily broad so that unusual and unexpected types of vision problems can be dealt with in a flexible manner and to ensure the safety of the public. While Part F. does not specify the kinds of restrictions that may be imposed, it does not appear that those restrictions would be limited to speed, type of road, or geographic area. Rather, it would no doubt be necessary in some cases for the Chief Evaluator to impose further restrictions on a particular applicant, such as the number of hours which can be driven in a particular time period or the type of vehicle which could be operated.

12. Mr. Abe Rosenthal, Executive Vice President of Minnesota Transport Services Association (MTSA), in his written posthearing comment, expressed concern over the proposed rules with respect to their impact on truck drivers who are regulated by the Minnesota Public Utilities commission and other state and federal agencies. He stated, in part as follows:

> "MTSA is concerned that its member firms be able to readily discern that physical and mental standards applicable to truck drivers and that the standards not unreasonably conflict with other federal and state standards or create unequal federal and state physical and mental standards for truck drivers. Therefore, since MTSA member firms are required by state and federal laws and rules to use only truck drivers who meet federal and state physical and mental qualifications to drive their trucks, MTSA respectfully requests the adoption of standards consistent with current federal and state truck driver physical and mental qualifications including the provisions for waivers for certain conditions. Since the adoption of the proposed rules will create significant differences in physical and mental driver standards and waivers, MTSA believes it would be more appropriate for the Hearing Examiner and the Commissioner [sic] thoroughly examine the attached federal and state rules and model the proposed rules to be consistent with current state and federal rules."

Mr. Rosenthal's comments do raise an important issue which was mentioned previously, that is, the failure of the rules to distinguish between the restrictions that should be applicable to different types of vehicles to be operated by a licensed driver. MTSA did not propose any specific changes in the rules and the extent to which federal and state regulations of truck drivers should be followed by the Department in these rules is an issue that should be resolved, in the first instance, by the Department in the exercise of its expertise, experience and discretion. The Hearing Examiner should not undertake to propose potentially extensive changes before the Department has considered them.

The Statement does not indicate why specific provisions for truck drivers were not incorporated in the rules or whether the Department even considered doing so. While it is sensible for each agency to examine the rules of other agencies to avoid unnecessary inconsistencies, there is no statutory requirement that rules of state agencies be made consistent with one another or consistent with federal regulations. Where the Legislature has determined that consistency was desirable, it has required that rules be adopted jointly by two or more agencies or has required the agencies to work together or make their rules consistent with one another. See, e.g., Minn. Stat. § 171.321, subd. 2 (1980), § 171.41 (1980), and § 241.021, subd. 1(2) (1980). Therefore, while it is advisable for the Department to examine the other state and federal regulations applicable to truck drivers, the Department's failure to consider those other regulations does not render the proposed rules unnecessary or unreasonable. However, it is recommended that the Department examine the rules of the other agencies which Mr. Rosenthal submitted and determine what changes, if any, should be made in the proposed rules at this time or at some future time. While the Agency may, in this proceeding, make the changes in the rules as originally published, those changes may not be substantial as defined in 9 MCAR § 2.111.

13. In order to clarify 11 MCAR § 1.4093 C.1., the Department proposes to delete the words "either one or" from that clause to make it clear that corrective lenses are not required unless the applicant has less than 20/40 vision in both eyes. This is a necessary, reasonable and insubstantial clarification of the Department's intent. deleted p.2.

14. 11 MCAR § 1.4094 pertains to the rules applicable to drivers who suffer from any paroxysmal disturbances of consciousness, including epilepsy. Generally, the rule requires the cancellation of any license if the individual driver involved has experienced a period of unconsciousness during the last 12 months and reinstatement of the license only when the driver last experienced a period of unconsciousness at least 12 months previously. In addition, any drivers who have experienced periods of unconsciousness or who suffer from epilepsy must submit specified reports to the Department prepared by their physician. There were two adverse comments on this section as proposed. One comment was submitted by David Anderson of Blue Earth, Minnesota. He challenged the requirement that a person be free from periods of unconsciousness for a period of 12 months as an arbitrary figure not substantiated by medical research or other affirmative evidence. He felt that cancellation and reinstatement should both be governed by a 60-day time period instead of the 12-month period proposed by the Department.

However, there is competent authority for the adoption of a one-year period, as a minimum. Thus, in its Statement (p. 12), the Department noted:

> "The American Medical Association would apparently recommend that persons with these types of conditions [epilepsy] 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 [Ex. No. 21], and AMA-2 at 12-13 [Ex. No. 22]. 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."

Based on the Department's Statement and the supporting exhibits it introduced, pertaining to the basis of the 12-month requirement for seizure-free living, it is concluded that the rule, as proposed, is necessary and reasonable. While this rule does have a tremendous impact upon the mobility of persons residing in rural areas, the rule is not unreasonable or unauthorized in view of the safety risks involved if those persons are permitted to drive. The Department has not considered special treatment for persons residing in rural areas even though traffic patterns or risks may be less there, but there is no evidence that its failure to do so renders the rule unreasonable. However, the Department is not precluded from considering different safety factors involved in urban and rural areas and make changes in its rules based on those differences, if any.

15. Terrance D. Capistrant, M.D., Chairman of the Minnesota Medical Association's Resource Group on Drivers License Review suggested that section delete all references to narcolepsy. He stated:

deleted p. 4

> . . . It is our suggestion that narcolepsy be deleted wherever it appears in the rules and regulations. The reasons for this is that narcolepsy is variously overdiagnosed and underdiagnosed. Shortly after starting treatment for narcolepsy, patients should be able to drive a motor vehicle safely whereas in seizure patients, necessary length of time must occur before one can be secure in suggesting a motor vehicle. The other very important feature of narcolepsy is that invariably, there is a prodrome of sleepiness, which in responsible patients allows them, even if the prodrome is abrupt to pull over to the side and rest . The major distinction here is that most often seizures begin abruptly without warning making it especially dangerous to operate a motor vehicle. Other than this, the committee was in general agreement with the rules and regulations as formulated.

On the other hand, the American Medical Association (AMA) suggested that patients with narcolepsy not drive until they have been sympton-free for two years. See, Exhibit 21, p. 23.

In view of this difference of opinion, and the fact that the AMA report is over 20 years old, the Department should consider making the treatment of narcolepsy more flexible and not require a one-year cancellation in all cases. This could be done by including narcolepsy under § 1.4097 B., where each case could be evaluated on its merits. However since there is authority for the Department's proposed treatment of this condition, its current rule is necessary and reasonable.

16. 11 MCAR §§ 1.4095 and 1.4096 pertain to the licensure of persons who have diabetes or mental illnesses or deficiencies. These sections were subject

to two adverse public comments. Maurice Nygaard of St. Paul questioned the need for special rules applicable to persons who have diabetes on the grounds that the record contained no statistical evidence that such persons pose a greater threat to public safety than the average driver. However, medical texts cited in the Department's Statement (p. 13) as well as a report of the Federal Highway Administration (Ex. 28), do support the conclusion that individuals who have diabetes pose an increased risk to the public which requires Departmental action. For that reason, the rule provision proposed is necessary and reasonable.

Ronald Young, Assistant Commissioner of the Mental Health Bureau of the Minnesota Department of Public Welfare, challenged the potential application of § 1.4096. Insofar as that section could be interpreted as authorizing DPS to require license applicants to disclose whether or not they have been treated or hospitalized for a mental disorder, Dr. Young was opposed to it. His concern is consistent with Minn. Stat. § 253A.18, subd. 1 (1980), which provides that no person treated, hospitalized or committed under that chapter can, only for that reason, have his driver's license denied since such treatment, etc., is not a judicial determination of incompetency. DPS did not explain what questions are currently used on its application forms or what questions it intends to include in the future. However, it is clear that the question of concern to Dr. Young would, if adopted, be unreasonably broad, especially considering the stigma generally associated with mental health treatment by uninformed members of the public, and the right of privacy individuals have with respect to medical matters. For that reason, the Hearing Examiner recommends that the question raised by Dr. Young not be utilized. Unnecessarily broad data collection by state agencies is inconsistent with the Minnesota Government Data Practices Act, Minn. Stat. §§ 15.1611 et seq. (1980). See, Joint House-Senate Privacy Study Commission, Report to the Minnesota Legislature 3 (1976).

17. The Department proposes to amend the last paragraph of § 1.4096 by deleting the word "medical" from the phrase "from any competent medical authority" to make it clear that any competent authority, including psychologists, can submit the report mentioned in that paragraph. This language addresses the suggestion raisd by Dr. Young, and is a necessary, reasonable and insubstantial amendment to the language as originally proposed. However, the language in that paragraph that the competent authority must be "acceptable to the Commissioner" is confusing. If an authority is competent, that authority should be acceptable. Consequently, it is recommended that the quoted language be deleted or replaced with standards for determining when an otherwise competent authority is unacceptable to the Commissioner.

deleted p. 7.

deleted p. 7.

18. 11 MCAR § 1.4097 pertains to miscellaneous physical or mental conditions which can result in the suspension, cancellation, denial or restriction of drivers' licenses. This section was subjected to only one adverse public comment directed at Part B.5. That part provides that a physician's statement shall be required of persons who may not be able to drive safely because of a:

> 5. Lack of physical endurance, such as that manifested by a person subject to fatigue, exhaustion, nervous tension, or adverse reaction to monotony.

Upon receipt of a physician's statement within the time limits specified, driving privileges for such persons may be cancelled if, because of the condition,

the person cannot drive safely. The United Handicapped Federation objected to this part as vague and overbroad because a reasonable person could not determine from reading the language whether that person would be included in this category. While the language used is broad and general in nature, the situations and conditions when a lack of physical endurance might be inimical to public safety or welfare or render the person unable to exercise reasonable and ordinary control over a vehicle would no doubt be extremely diverse. Structuring the rule in a more specific manner would be difficult. For that reason, the proposed language is found to be necessary and reasonble.

19. It is noted that, under § 1.4097 A., no provision is made for the issuance of restricted licenses. Restrictions are permitted on any class of licenses under Minn. Stat. § 171.09, and it is suggested that the issuance of restricted licenses under this section be specifically set forth as an alternative to license cancellation. In addition, the types of restrictions contemplated could be clarified here or in a separate definition of a restriction.

see variance addition on p. 11

20. Section 1.4098 contains provisions for the licensing of individuals who have failed, after three attempts, to pass the drivers' license examination. This section basically incorporates a procedure which has been in effect in the Department for many years and was subject to no adverse comment or criticism. It is found to be necessary and reasonable.

21. Section 1.4099 contains provisions for a medical review board to advise the Commissioner on requests for variances from the rules. After receipt of the review board's recommendations, the Commissioner reconsiders the application and takes whatever action he deems appropriate. The driver, or applicant, is informed of that decision and, if the Commissioner's decision differs from that of the review board's recommendation, the Commissioner's reasons for his decision are included. The United Handicapped Federation stated that where the Commissioner's decision is different from that of the review board, the provision merely requiring the Commissioner to state the reasons for his decision may not be adequate if "the applicant has reason to believe the Board's recommendation should be accepted." That statement is not persuasive. Where the Commissioner disagrees with the determination of the review board and states the reasons and basis for his disagreement, it is difficult to understand what further explanation could be given.

However, this section does not require the Department to inform an applicant of the reasons why a variance application is granted, or state the standards applicable to the granting of a variance, as required by Minn. Stat. § 15.0412, subd. 1a (1980). This failure constitutes a substantive violation of law that must be corrected. To make the necessary correction, the second paragraph of Part B. must be amended to require the Commissioner to state reasons for the granting or denial of all variance requsts and not merely the reasons for action different from the Medical Review Board's recommendation. In addition, the standards applicable to the granting of a variance must be set out. The standard should be phrased in terms of the ability of the person seeking a variance to operate a motor vehicle safely, with reasonable and ordinary control, and without posing a danger inimical to public safety or welfare. Minn. Stat. § 171.04(8) and (9) (1980). In addition, as required by the statute, the rule should state that variances from statutory standards are not available.

see added language p. 10

22. At the hearing, the Board proposed to amend § 1.4099 B. by adding at the end of the first sentence, a citation to the rules from which a variance may be sought, so that the last part of that sentence reads "11 MCAR 1.4092 to 11 MCAR 1.4098." This is a necessary and reasonable amendment which specifies the rules for which a variance can be obtained or sought. However, a section sign (§) should be inserted between the "MCAR" and the section being cited in each case.

There were no other adverse public comments on the medical review board provisions, but there was a suggestion that the members be specialists in the area of the problem under consideration. However, since the review board has been in existence for a long period of time, and the variance procedure otherwise complies with Minn. Stat. § 15.0412, subd. 1a (1980), as necessarily amended (See Finding 20), its utilization is found to be necessary and reasonable.

23. There was little adverse public comment on the proposed rules and those sections not discussed in detail or commented upon are found to be necessary and reasonable on the basis of the Department's Statement.

Based upon the foregoing Findings of Fact, the Hearing Examiner makes the following:

CONCLUSIONS

1. That the Department of Public Safety gave proper notice of the hearing in this matter.

2. That the Department has fulfilled the procedural requirements of Minn. Stat. § 15.0412, subd. 4-4f (1980) and all other procedural requirements of law or rule.

3. That the Department has demonstrated its statutory authority to adopt the proposed rules and has fulfilled all other substantive requirements of law or rule within the meaning of Minn. Stat. §§ 15.0412, subd. 4e and 15.052, subd. 3(4)(i) and (ii) (1980), except as noted at Finding 21.

4. That the Department has documented the need for and reasonableness of its proposed rules with an affirmative presentation of facts in the record within the meaning of Minn. Stat. § 15.0412, subd. 4c (1980).

5. That the amendments and additions to the proposed rules which were suggested by the Department after publication of the proposed rules in the State Register do not result in rules which are substantially different from the proposed rules as published in the State Register within the meaning of Minn. Stat. § 15.0412, subd. 4d (1980) and 9 MCAR §§ 2.110 A. and 2.111 (1980 Ed.).

6. That the Hearing Examiner has suggested action to correct the defects cited in Conclusion 3 as noted at Finding 21.

7. That due to Conclusion 3, this Report has been submitted to the Chief Hearing Examiner for his approval pursuant to Minn. Stat. § 15.0412, subd. 4d (1980).

8. That any Findings which might properly be termed Conclusions and any Conclusions which might properly be termed Findings are hereby adopted as such.

9. That a finding or conclusion of need and reasonableness in regard to any particular rule subsection does not preclude and should not discourage the Department from further modification of the proposed rules based upon an examination of the public comments, provided that no substantial change is made

from the proposed rules as originally published, and provided that the rule finally adopted is based upon facts appearing in this rule hearing record.

Based upon the foregoing Conclusions, the Hearing Examiner makes the fol lowing:

RECOMMENDATION

It is hereby recommended that the proposed rules be adopted except where specifically otherwise noted above.

Dated this 18th day of June, 1981.

JON L. LUNDE
Hearing Examiner