

## **UNPRESIDENTED ACTION BY FMCSA REMOVES ALL NEW YORK DC'S FROM NATIONAL REGISTRY**

On June 1<sup>st</sup>, 2016, the FMCSA took the unprecedented action of removing all chiropractors in the state of New York from the National Registry of Certified Medical Examiners. This action was unusual and possibly may have violated their own regulations as to how it was performed (lack of due process). The response appears to be based upon their receiving a copy of the unsigned letter that was sent to the chiropractic CME's in the state.

Furthermore, the FMCSA has indicated that all exams performed from May 21, 2014, through June 1, 2016, by chiropractic CME's in the state and considered valid under the same state law that apparently does not allow a chiropractor to perform a DOT physical after June 1<sup>st</sup>.

*Dear Dr:*

*Pursuant to the provisions of 49 U.S.C. 31149(d)(2), 49 CFR 390.115(e) and 5 USC § 558(c), this letter provides notice of your removal from the National Registry of Certified Medical Examiners (National Registry). The Federal Motor Carrier Safety Administration (FMCSA) finds that your immediate removal from the National Registry and invalidation of your certification credential issued under 49 CFR 390.109 is required on the grounds of the public health, interest and safety or because of willful conduct. You must immediately cease (1) issuing medical examiner's certificates required by the U.S. Department of Transportation for commercial motor vehicle (CMV) drivers and (2) holding yourself out as a medical examiner listed on the National Registry.*

*Effective as of the date of this letter, you are no longer certified to conduct medical examinations to determine whether CMV drivers meet FMCSA's physical qualification standards. Your information will remain publicly available in the National Registry for three years, with a notice that you are no longer listed on the National Registry as of the date of removal.*

*Your immediate removal from active listing on the National Registry is based on the following:*

*1. In a letter dated September 24, 2015, the New York State Board for Chiropractic, notified Doctors of Chiropractic who are licensed in New York and were listed at that time on the National Registry that under their authorized scope of practice, Doctors of Chiropractic in New York are not authorized to perform the DOT physical examinations required to determine and certify the physical qualifications of CMV drivers. The letter also indicated that the DOT examination for CMV operators is beyond the scope of chiropractic practice as defined under New York State law. A copy of that letter is enclosed.*

*2. Under applicable New York State law you are no longer eligible to perform the required DOT physical examination. 49 CFR 390.103(a)(1) and 390.111(a). FMCSA is no longer able to permit you to be listed as a certified medical examiner on the National Registry. Therefore, FMCSA finds that any DOT physical examinations that were conducted after September 24, 2015, or that may be conducted in the future, in New York State by Doctors of Chiropractic licensed by the New York State Board for Chiropractic and listed on the National Registry would constitute either willful conduct or would be contrary to the public health, interest and safety.*

*State Driver Licensing Agencies and motor carrier employers will no longer be allowed to accept medical examiner's certificates issued by you to interstate CMV drivers after the date of this letter. DOT physical examinations conducted and medical examiner's certificates that were issued while you were listed on the National Registry will remain valid until their expiration date. You are expected to retain each original (paper or electronic) completed Medical Examination Report and a copy or electronic version of each medical examiner's certificate on file for at least 3 years from the date of examination and make all records and information in these files available to an authorized representative within 48 hours after the request is made, as required by 49 CFR 391.43(h).*

*Beginning June 1, 2016, you will no longer have access to the National Registry website and will not be able to enter CMV Driver Medical Examination Results Form, MCSA-5850 for drivers whom you have examined. FMCSA requests that you send us Medical Examiner's Certificate (MEC), Form MCSA-5876, for each interstate CMV driver that you examined and did not enter form MCSA-5850. If you examined a driver, did not enter form MCSA-5850, but did not issue Form MCSA-5876, please provide us with this driver's name and examination date.*

*The requested documents must be sent to FMCSA at the following address:*

*Federal Motor Carrier Safety Administration  
Medical Programs Division, W64-224  
1200 New Jersey Avenue, S.E.  
Washington, D.C. 20590*

## **NEW YORK UPDATE**

New York legal team responds quickly. All DC CME's in New York who are a part of the coalition have responded to the FMCSA, objecting to this unprecedented action taken by the FMCSA. Our legal team is preparing the official response to the FMCSA and requesting an administrative hearing. All legal approaches in dealing with this unprecedented action will be considered.

FOIA request submitted to FMCSA reveals additional and confusing correspondences from NYS Board and the FMCSA. Multiple correspondences between the Board and the FMCSA, the latest being May 20<sup>th</sup>, 2014 reveal no definitive statement that a New York chiropractor may not perform a DOT physical and actually state that based on what is required of a DOT physical, the New York State board would approve of a DC's ability to perform them in the state. The FMCSA had accepted these correspondences, along with the boards initial confirmation on August 12<sup>th</sup>, 2005, to indicate that chiropractors in New York were able to perform a DOT physical. This is why were included on the National Registry from May 21<sup>st</sup>, 2014, the day the law went into effect, until June 1<sup>st</sup>, 2016. ALL EXAMS (UPWARDS OF 30,000) PERFORMED BY CHIROPRACTIC CME'S IN NEW YORK DURING THIS TIME FRAM ARE CONSIDERED VALID.

Safe Drivers identifies state official who appears solely responsible for the "change of opinion" in New York. His last name is Lentivech, and he is the Deputy Commissioner of Professions for the NYS Education Department (an appointed position in state government. Our lobbyist in New York has reached out to attempt to set up a meeting, and continues to work in that direction. To date all requests have been unanswered, including from a official written request.

Members of the state New York State legislature have offered assistance to Safe Drivers. One in particular who is a member of the education committee, Senator Latimore, has sent a request to the Deputy Commissioner of Professions (Lentivech) in an attempt to force a meeting with Safe Drivers and his office concerning this issue. Other state legislators are also offering support and the list grows.

The New York State Chiropractic Association is working on updating our scope of practice, but this is expected to take 2 to 3 years to accomplish. Safe Drivers supports NYSCA in its efforts and will provide assistance while working on the current DOT situation in New York.