

Driver Safety Procedure

**DS 2001-11
REVISED
2/2009**

Nexus to Driving: Physical or Mental (P&M) Conditions

Issue Date: February 18, 2009

Implementation Date: Upon receipt, retain until Driver Safety (DS) Manual and DS Uniform Processes (DSUP) Manual revision.

Purpose To inform Driver Safety (DS) employees of the need to establish a nexus to driving when reviewing the qualifications of a driver with a physical or mental (P&M) condition.

Note: This memo replaces DS 94-38, Physical & Mental (P&M) Conditions, Nexus With Driving Required.

Background The department may refuse to issue or renew a driver license to an individual who is incapable of safely operating a motor vehicle for reasons relating to a P&M condition. There must be a nexus between a driver's P&M condition and the ability to operate a motor vehicle safely for the department to take an action against the driving privilege.

Factors to Consider The following factors should be considered when determining whether the driver has a P&M condition that might interfere with the ability to drive safely.

- Physical Requirements
- Mental Requirements
- Sensory Functions
- Emotional Stability
- Knowledge Requirements
- Physical Limitations/Restrictions
- Physical or Mental Condition and History
- Aggravating Factors
- Treatment
- Compensating Factors

Nexus of P&M Condition to Driving The existence of a P&M condition does not, in itself, constitute grounds for a license withdrawal action. There must be a link or connection to the individual's ability to drive safely. There must be a basis for the department's actions against the driving privilege. The nexus is established by association, i.e., the way the condition affects or incapacitates the driver.

**Nexus of P&M
Condition to
Driving,
(cont'd)**

Incapacitation may involve physiological, psychological or social dysfunction. A driver with alcohol or drug dependency issues may suffer from perceptual problems, such as blurred, dimmed, or double vision. Other effects may include poor judgement, aggressive behavior, impaired decision making, slowed motor functions, impaired coordination and reflexes, and drowsiness. It is important to distinguish those P&M conditions that affect safe driving and those that are only a medical problem (no nexus to driving). When analyzing a P&M case, the nexus to driving and the analysis that led to the decision must be evident in your report.

**Burden of
Proof and
Drugs/Alcohol
Cases**

§12806 of the California Vehicle Code (CVC) authorizes the department to refuse to issue a driver license to anyone who is rendered incapable of operating a motor vehicle because of alcoholism, excessive or chronic use of alcoholic beverages, or addiction to, or habitual use of, any drug.

The act of driving in an unsafe manner while under the influence of drugs/alcohol demonstrates incapacity but does not in itself prove alcoholism, drug addiction, excessive and chronic use of alcoholic beverages, or addiction to, or habitual use of, any drug. The burden is on the DMV to show by a preponderance of evidence that there is a current history or clinical diagnosis of alcoholism or drug addiction. Excessive and chronic use of alcoholic beverages, or addiction to, or habitual use of, any drug must be established by the department through medical documentary evidence and/or testimony from the driver. Only when any of these incapacitating conditions are established to exist may an action be warranted.

**Medicinal
Marijuana**

With the change in the law which allows a physician to prescribe marijuana to patients, hearing officers have reported being presented with this issue during a reexamination or a hearing. The Compassionate Use Action of 1996 allows physicians to recommend the use of marijuana to patients that have a serious illness as identified in Health and Safety Code §11362.755(h). Serious medical condition means all of the following medical conditions:

- (1) Acquired immune deficiency syndrome (AIDS).
 - (2) Anorexia.
 - (3) Arthritis.
 - (4) Cachexia.
 - (5) Cancer.
 - (6) Chronic pain.
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**Medicinal
Marijuana
(Cont.)**

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- (7) Glaucoma.
 - (8) Migraine.
 - (9) Persistent muscle spasms, including, but not limited to, spasms associated with multiple sclerosis.
 - (10) Seizures, including, but not limited to, seizures associated with epilepsy.
 - (11) Severe nausea.
 - (12) Any other chronic or persistent medical symptom that either:
 - (A) Substantially limits the ability of the person to conduct one or more major life activities as defined in the Americans with Disabilities Act of 1990 (Public Law 101-336).
 - (B) If not alleviated, may cause serious harm to the patient's **safety** or physical or mental health.

A purpose of the Compassionate Use Action of 1996 is “to ensure that patients and their primary caregivers who obtain and use marijuana for medical purposes upon the recommendation of a physician are not subject to criminal prosecution or sanction,” according to Health and Safety Code §11362.5(B).

Qualified patients may voluntarily apply to the identification card program; however, it is not required. An identification card is issued by a county health department that identifies a person authorized to engage in the medical use of marijuana.

The use of medicinal marijuana approved by a physician should be handled in the same manner as any other prescription medication which may affect safe driving. The hearing officer should inquire as to the frequency of use, time of use, and the relationship to driving as they would with the use of other prescribed medications.

Media Reports

Newspaper articles and television/radio broadcasts cannot be used as the sole basis for scheduling a reexamination or taking an immediate suspension/revocation action because of the inadmissibility of such documents/reports as evidence. Credible documents such as law enforcement reports, medical referrals, or family referrals are required to initiate a reexamination or take an immediate action. Such media reports should cause the taking of the initiative to contact appropriate sources for such documentation.

Contact

Direct questions or concerns regarding this memo to Glenna M. Smith, Driver Safety Procedures Unit, at (916) 657-8060.



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