

# DSI TRANSPORTS, INC.

a Rentokil company

45172

October 5, 1998

Docket Clerk, U.S. DOT Dockets  
Room PL-40 1  
400 Seventh Street, SW.  
Washington, DC 20590-0001

DEPT. OF TRANSPORTATION  
DOCKET SECTION  
98 OCT 13 PM 2:13

RE: **FHWA** Docket No. FHWA-98-3542 --15  
Physical Qualifications of Drivers; Medical Examination; Certificate

Dear Sir/Madam;

I was very pleased to see the efforts to update, simplify and make more consistent the current medical form being used. I applaud the efforts and I support such an effort 100%. What I cannot agree with is the **FHWA's** proposing recommendations for a baseline ECG and EST. They are currently considered as optional and I feel they should remain optional.

The 2 day conference on cardiac disorders and commercial drivers at the American College of Cardiology in Bethesda, Maryland in 1986 evidently made specific recommendations for qualifying drivers with cardiovascular conditions and for screening drivers for cardiac risk factors. These recommendations were made prior to the American with Disabilities Act passed in 1991. Implementing such recommendations would put all trucking companies in potential violation of the ADA. If a driver is *regarded* as having some sort of cardiac disorder and the driver is not hired because of this, a violation of the ADA may have occurred.

A similar example is with abnormalities of the back such as spondylolisthesis. An X-ray (diagnostic tool) shows spondylolisthesis or some other abnormality and the driver is rejected for employment. The EEOC can and has filed suits against trucking companies because the driver was rejected for employment based on this diagnosis. I see no difference between this and what an ECG (diagnostic tool) would show and/or tell an examining physician. The EEOC's position is that X-rays and **ECG's** do not effectively show the likelihood of increased risk of injury or the ability to do or not do the job.

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Unfortunately, once the EEOC files suit, the burden of proof (and the tremendous associated legal costs) have to be borne by the trucking company, not the treating physician or the FHWA. Unless the EEOC and the FHWA can come to some agreement on the use of such diagnostic tools and what constitutes a disability under the ADA, the proposed recommendations for ECG's and EST's will put trucking companies in the delicate situation of having to defend themselves with one governmental agency while trying to be in compliance with another governmental agency. This proverbial "caught between a rock and a hard place" is unfair to trucking companies and would unnecessarily increase our cost of doing business. We need definitive guidelines on what qualifies and what disqualifies a driver. We need more than advisory guidelines. Examining physicians I have talked to are looking for the same information. They are many times hesitant to disqualify a driver because of the fear of being pulled into a lawsuit. It is easier to simply pass a driver when faced with a gray area where there are no definitive guidelines. This could be putting drivers on the road that are at a much higher risk of injuring themselves and even worse, causing harm to the general public.

I would strongly urge the FHWA to reconsider the proposed recommendation of making **ECG's** and **EST's** mandatory. For companies that are committed to being in full compliance to all regulations, this proposal would make our task impossible.

Sincerely,

A handwritten signature in black ink, appearing to read "T. Collins", with a long horizontal flourish extending to the right.

Terry E. Collins  
Director of Human Resources  
Initial DSI Transports, Inc.