

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #3

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SECRETARY OF STATE

**NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE
AND
FILING WITH THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE**

AGENCY: Department of Motor Vehicles TITLE NUMBER: 91

CITE AUTHORITY §17A-2-9

AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 5

TITLE OF RULE BEING AMENDED: Denial, Suspension, Revocation or
Nonrenewal of Driving Privileges

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: _____

TITLE OF RULE BEING PROPOSED: _____

THE ABOVE PROPOSED LEGISLATIVE RULE HAVING GONE TO A PUBLIC HEARING OR A PUBLIC COMMENT PERIOD IS HEREBY APPROVED BY THE PROMULGATING AGENCY FOR FILING WITH THE SECRETARY OF STATE AND THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE FOR THEIR REVIEW.



L. W. Bechtold, Commissioner



ARCH A. MOORE, JR.
Governor

DEPARTMENT OF MOTOR VEHICLES
BUILDING 3, CAPITOL COMPLEX
CHARLESTON, WEST VIRGINIA
25317

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L. W. BECHTOLD
Commissioner
DEPARTMENT OF STATE

SUMMARY OF CHANGES

1. No changes as a result of public comment.
2. One change to correct a typographical error; Section 3.2, Paragraph 3, deleting ~~after held~~ after the underscored language as early as practical.


L. W. Bechtold, Commissioner

(Proposed)
TITLE 91
WEST VIRGINIA LEGISLATIVE RULES
DEPARTMENT OF MOTOR VEHICLES
SERIES 5

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DEPARTMENT OF STATE
SECRETARY OF STATE

Title: Denial, Suspension, Revocation, or Nonrenewal of Driving Privileges

§91-5-1. General

1.1 Scope - These regulations establish procedures for the denial, suspension, revocation, nonrenewal and reinstatement of motor vehicle operating privileges.

1.2 Authority - West Virginia Code §17A-2-9, §17B-2-7.

1.3 Filing Date - April 6, 1988

1.4 Effective Date - April 7, 1988

§91-5-2. Application and Enforcement

2.1 Application - These regulations apply to motor vehicle operators licensed by the Commissioner of Motor Vehicles.

2.2 Enforcement - Enforcement of these regulations is vested with the Commissioner of Motor Vehicles or lawful designee.

§91-5-3. Denial of Driving Privileges for Medical Reasons

(Proposed Amendment filed September 21, 1988)

3.1 Statutory Provisions - West Virginia Code §17B-2-3 provides that the Department of Motor Vehicles shall not issue any operator's license, chauffeur's license, or junior probationary license to any person when the Commissioner of Motor Vehicles has good cause to believe that the operation of a motor vehicle on the highways of this State by such person would be inimical to public safety or welfare. West Virginia Code §17B-3-6 authorizes the department to suspend the license of an operator, chauffeur, or junior probationary operator without preliminary hearing upon a showing by its records or other sufficient evidence that the licensee is incompetent to drive a motor vehicle.

In view of these statutory provisions, an operator's, chauffeur's, or junior probationary license will not be issued to or renewed for any person when the Commissioner determines that the person is incompetent to drive a motor vehicle, or when the Commissioner has good cause to believe that the operation of a motor vehicle on the highways of this State by the person would be inimical to public safety or welfare, unless the application for the license is accompanied by a letter of explanation in such detail as the Commissioner may require concerning the mental or physical condition of the applicant at the time application for license is made.

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3.2 Procedures for Original, Renewal, or Duplicate Applications for License - The Commissioner, after reviewing the letter of explanation, may:

- (1) Approve the application for license;
- (2) Approve the application for license, and impose appropriate restrictions as the applicant's physical or mental condition may require; or
- (3) Require the applicant to present a Medical Report Form, completed by a physician of the applicant's choice, licensed in the United States, or require a report by a Board Certified Physician in the appropriate medical specialty for the condition under consideration, or a Vision Examination Report Form, completed by an optometrist or ophthalmologist, licensed in the United States, of the applicant's choice, to the Commissioner for presentation to the Driver's License Advisory Board. The Medical Report Form and Vision Examination Report Form shall be as provided by the Commissioner. The Commissioner, upon receipt of the advice of the Board, may take the action as indicated in number (1) or (2) above, or may refuse the application and or order the suspension of the license.

If an application for driver's license, or application for renewal of driver's license is refused by the Commissioner because of a physical or mental condition, the applicant shall be notified by certified or registered mail, return receipt requested and shall be entitled to a hearing on the refusal by the Commissioner.

Upon receipt, by the applicant, of the refusal to issue or renew a driver's license, the applicant shall have ten (10) calendar days to request, in writing, from the Commissioner a hearing upon the refusal of the Commissioner to either issue or renew a license. Such written request must be filed with the Commissioner in person or by registered or certified mail, within ten days after receipt of a copy of the order of refusal or suspension. The hearing shall be before the Commissioner or an authorized deputy or agent of the Commissioner. All of the pertinent provisions of West Virginia Code Chapter 29A, Article 5, shall apply to the hearing. The hearing shall be held within twenty days as early as practical after ~~held~~ in the county where the person resides unless the Commissioner or the Hearing Examiner and such person agree that the hearing may be held in some other county. Any such hearing shall be held as early as practical after the date upon which the Commissioner received the written request. The Commissioner may postpone or continue any hearing upon his own motion at his discretion or upon application of the licensee for good cause shown.

For the purpose of conducting such hearing, the Commissioner has the power and authority pursuant to West Virginia Code §17B-3-6 to issue subpoenas and subpoenas duces tecum which shall be issued in accordance with the provision of West Virginia Code §29A-5-1.

The scope of the hearing shall be whether the operation of a motor vehicle on the public streets and highways of this State by the person would be inimical to public safety or welfare.

After the hearing and consideration of all the testimony and evidence

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and record in the case, the Commissioner shall make and enter an order affirming, rescinding, or modifying the earlier order of the Commissioner.

A copy of the order made and entered following the hearing shall be served upon the licensee or applicant by registered or certified mail, return receipt requested.

If the Commissioner, after the hearing, does make and enter an order affirming his earlier order of denial, suspension or non renewal, the person shall be entitled to judicial review as set forth in West Virginia Code Chapter 29A.

Upon a showing by its records or other sufficient evidence that the licensee is incompetent to drive a motor vehicle, the Department may suspend the license of an operator or chauffeur without a preliminary hearing pursuant to West Virginia Code §17B-3-6.

3.3 Procedure for medical examination of licensee - The Department, having good cause to believe that a licensed operator or chauffeur is incompetent, or otherwise not qualified to be licensed, may upon written notice of at least five days to the licensee require him to submit to a medical examination and present a Medical Report Form, completed by a physician of the applicant's choice, licensed in the United States, or require a report by a Board Certified Physician in the appropriate medical specialty for the condition under consideration, or a Vision Examination Report Form completed by an optometrist or ophthalmologist, licensed in the United States, of the applicant's choice, to the Commissioner for presentation to the Driver's License Advisory Board established in accordance with West Virginia Code §17B-2-7a. The Medical Report Form and Vision Examination Report Form shall be as provided by the Commissioner.

The Commissioner, after reviewing the Medical Report or Vision Examination Report and the recommendation of the Driver's License Advisory Board, may:

- (1) Determine that the licensee is competent to drive a motor vehicle;
- (2) Determine that the licensee is competent to drive a motor vehicle if certain appropriate restrictions are imposed and impose such restrictions as the licensee's physical or mental condition may require; or
- (3) Determine that the licensee is incompetent to drive a motor vehicle, that no appropriate restrictions can be imposed under which the licensee could competently operate a motor vehicle, and order the suspension of the license until such time as the licensee is required to submit further information to determine whether or not he is competent to drive a motor vehicle.

Upon making a determination that the licensee is incompetent to drive a motor vehicle, the Commissioner shall immediately make and enter an order suspending the person's license to operate a motor vehicle in this State. The Department, upon suspending a license, shall may require that the license be surrendered to and be retained by the Department until the outcome of any hearing requested or until the end of the period of the suspension. A copy of the order shall be immediately forwarded to the person by registered or certified mail, return receipt requested. Upon receipt by the applicant of the

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Order of Suspension, the driver shall have ten (10) days to request, in writing, from the Commissioner a hearing upon the suspension by the Commissioner. Such written request must be filed with the Commissioner in person or by registered or certified mail, within ten (10) days after receipt of a copy of the order of suspension. The hearing shall be before the Commissioner or an authorized deputy or agent of the Commissioner. All of the pertinent provisions of West Virginia Code Chapter 29A, Article 5, shall apply to the hearing. The hearing shall be held in the county where the person resides unless the Commissioner or the Hearing Examiner and such person agree that the hearing may be held in some other county. Any such hearing shall be held as early as practical after the date upon which the Commissioner received the written request. The Commissioner may postpone or continue any hearing at his discretion or upon application of the licensee for good cause shown.

A timely request for a hearing may at the discretion of the Commissioner stay the Order of Suspension.

For the purpose of conducting such hearing, the Commissioner has the power and authority pursuant to West Virginia Code §17B-3-6 to issue subpoenas and subpoenas duces tecum which shall be issued in accordance with the provision of West Virginia Code §29A-5-1.

The scope of the hearing shall be whether the person is competent to operate a motor vehicle on the public streets and highways of this State.

After the hearing and consideration of all the testimony and evidence in the case, the Commissioner shall make and enter an Order affirming, rescinding, or modifying the earlier Order of the Commissioner.

A copy of the Order made and entered following the hearing shall be served upon the licensee by registered or certified mail, return receipt requested.

If the Commissioner, after the hearing, does make and enter an order affirming his earlier Order of Suspension, the person shall be entitled to judicial review as set forth in West Virginia Code Chapter 29A.

3.4 Standards for Medical or Vision Review

(1) Medical - The Driver's License Advisory Board shall evaluate each medical case referred to it on an individual basis and make recommendations to the Commissioner for his decision.

(2) Vision - Conventional corrective lenses, including surgical intraocular implants and contact lenses, will be acceptable for meeting the visual acuity requirements for any learner's permit, driver's license, chauffeur's license, or junior probationary license. Special equipment or special lens arrangements will not be considered conventional for the purposes of this rule.

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Those persons who do not satisfy the visual acuity standard of 20/40 may be required to submit a vision examination report form, completed by an optometrist or ophthalmologist, licensed in the United States, of the applicant's choice, to the Commissioner for presentation to the Driver's License Advisory Board. The Board may consider peripheral vision, depth perception and color recognition in their recommendation to the Commissioner. Additionally, the Commissioner may prescribe a traffic environment vision test be administered to the person by designated officers of the Department of Public Safety.

§91-5-4. Reinstatement of Suspended Registration

4.1 Procedures - Upon suspension of any registration in accordance with any of the provisions of the West Virginia Motor Vehicle Safety Responsibility Law, Chapter 17D of the Code, the license or registration plate involved shall be forthwith destroyed upon receipt of same by the Department. This procedure is necessary because of the limited storage facilities available to the Department and by virtue of the cost which would be involved in attempting to store such plates. Accordingly, upon reinstatement of any such registration within the registration period, application must be made for a duplicate or substitute registration or license plate upon the form prescribed for such purpose, and the fee required shall be that established by West Virginia Code §17A-10-11. If the registration card pertaining to the registration which was suspended was not returned to the Department during the period of suspension, and such applicant does not possess such card at the time of reinstatement of the suspended registration, the fee established by said Section 11 for obtaining a duplicate or substitute registration card shall also be required.

§91-5-5. Reinstatement of Driving Privileges of Persons Whose Operator's and Chauffeur's Licenses Were Revoked under Prior Enactment of §17C-5-2.

5.1 Procedures - Any person whose operator's or chauffeur's license has been revoked may apply for restoration of driving privileges at the end of the period of revocation or minimum period of revocation as the case may be. Any such person whose driving privileges were revoked for a conviction under West Virginia Code §17C-5-2 prior to its reenactment in 1981, may request in writing to have such person's driving privileges restored. In addition to filing proof of financial responsibility as required by West Virginia Code Chapter 17D, Article 4, any such person convicted for a subsequent offense under said West Virginia Code §17C-5-2 within a period of five (5) years must also, in light of the former provisions of said West Virginia Code §17C-5-2 obtain and file with the written request, five letters from persons in the applicant's community. Each of these letters must state that the writer has known the applicant personally for more than five years; that the applicant has not driven a motor vehicle during the period of revocation; that in the writer's opinion the applicant is not likely to repeat the offense for which the license was revoked; that the public safety does not require that the applicant's license be revoked any longer; and that the applicant has not, to the knowledge of the writer, been addicted to the use of intoxicating

beverages or narcotic drugs or used the same during the preceding five years. All hearings upon the written request for restoration of driving privileges shall be held in accordance with the provisions of Department of Motor Vehicles Rule Series 1, Section 3.

§91-5-6. Suspending a West Virginia Resident's License Upon Conviction in Another State

6.1 Statutory Provisions - West Virginia Code §17B-3-3 authorizes the Commissioner to suspend a resident's license upon conviction in another state.

6.2 Procedures - The Department shall suspend or revoke the driving privileges of any resident of this state upon receiving notice of conviction of an offense in another jurisdiction, which if committed in this state, would be grounds for the mandatory suspension or revocation of driving privileges.

If the records of the Department disclose that a conviction is the second or subsequent conviction of the same offense in this or any other jurisdiction, the Department shall suspend or revoke the resident's driving privileges in the same manner as if the offense had occurred in this state.

Driving privileges can only be restored after the licensee has complied with all the provisions of the Motor Vehicle Code and Administrative Regulations in the same manner that would be required if such licensee had been convicted in this State.

§91-5-7. The Point System

7.1 Records - West Virginia Code §17B-2-14 requires that records be kept in order that an individual record of each licensee showing the convictions of such licensee be readily ascertainable and available for consideration by the Department upon any application for renewal of license "and at other suitable times" consistent with the provisions of West Virginia Code §17B-3-6(3). Accordingly, a record keeping system to be known as the Point System and to be administered by the Driver Improvement Section is herein established.

7.2 Offenses - Point Total - When any licensee of the State of West Virginia is convicted in the State of West Virginia or, pursuant to the provisions of West Virginia Code §17B-3-3, in any other state, of any of the following offenses involving a motor vehicle, which conviction has become final, the offense and the point total shown opposite such offense will be entered on such licensee's driver record maintained by the Department of Motor Vehicles.

<u>Statute Violated</u>	<u>General Description of Offenses</u>	<u>Point Value</u>
§17C-5-3, §17C-18-1	Reckless Driving	6

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§17C-4-2, §17C-18-1	Hit and run involving property damage only	4
§17C-6-1	Speeding in school zone	6
§17C-12-7, §17C-18-1	Passing stopped school bus	6
§17C-3-4, §17C-12-5, §17C-18-1	Failure to obey stop signs and other traffic signs and control devices, except failure to obey traffic light signals	3
§17C-3-5, §17C-3-7, §17C-18-1	Failure to obey traffic control signals or traffic light signals	3
§17C-7-2, §17C-7-6, §17C-18-1	Driving to left side of roadway	3
§17C-6-1, §17C-18-1	Driving too fast for conditions, failure to keep vehicle under control or hazardous driving	3
§17C-6-1, §17C-6-4, §17C-18-1	Speeding in violation of specified or established limits where the speed was in excess of 75 m.p.h., except on highways where established speed limit is 65 m.p.h. and conviction was in excess of 80 m.p.h.	6
§17C-6-1, §17C-6-4, §17C-18-1	Speeding in violation of specified or established limits where the speed was not in excess of 75 m.p.h.	3
§17C-9-1, §17C-9-2, §17C-9-3, §17C-9-4, §17C-9-5, §17C-10-2, §17C-12-6, §17C-18-1	Failure of driver to yield right of way	3
§17C-8-2, §17C-8-3, §17C-8-4, §17C-18-1	Improper righthand and lefthand turns	2
§17C-7-3, §17C-18-1	Failure of driver of overtaking vehicle to give audible signal, or failure to pass to the left at a safe distance, or driving to the right before safely clear of the overtaken vehicle, or failure of the driver of overtaken vehicle to give way to the right, or driver of overtaken vehicle increasing speed before being completely	3

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of a driver's record as outlined in Sec. 7.12, records on file in the Department of any accident not involving a conviction may be considered.

7.5 West Virginia Drivers Convicted In Other States - The appropriate number of points indicated in Section 7.2 will be noted on the driver record of any licensee convicted of any of the above offenses in violation of any municipal charter, bylaw or ordinance of any municipality in West Virginia, consistent with the provisions in West Virginia Code §17B-3-3. Any licensee of the State of West Virginia convicted in any other state or municipality therein, or in the District of Columbia, of any offense described in Section 7.2 in violation of any statute or ordinance of such other state, municipality or District of Columbia shall be charged with the appropriate number of points shown in said Section 7.2 opposite the description of such offense.

7.6 Forfeiture of Bail Or Deposited Collateral - Consistent with the provisions of West Virginia Code §17B-3-4 requiring the furnishing to the Department of certified abstracts of judgments on convictions, for the purposes of the point system, a forfeiture of bail or collateral deposited to secure a licensee's appearance in court, which forfeiture has not been vacated, shall be equivalent to a conviction.

7.7 Points Assigned for Same Occurrence - When a licensee is convicted of two or more offenses arising out of the same occurrence, points will be assigned for only one such offense and when there is a difference in the point values of the offenses, the greater point value will be assigned.

7.8 Revocations - West Virginia Code §17B-3-5 provides that certain convictions result in an automatic revocation, as opposed to suspension, of the operator's or chauffeur's license of the person so convicted. In as much as revocation is mandatory, such offenses will be noted by the Department on the driver record involved, but no points will be assigned for such convictions, except for reckless driving convictions where revocation is not mandatory unless there are three such convictions within a period of twenty-four months. When any person is convicted in the State of West Virginia for an offense for which no point value is assigned but for which a certified abstract of judgment on such conviction is required and furnished to the Department under the provisions of West Virginia Code §17B-3-4 such conviction shall be noted, without point value, on the driver record of the individual concerned.

7.9 Warning Letters - The Department shall send a warning letter to any licensee whose record shows a total of 6 points. The letter will advise the licensee of the convictions recorded on the licensee's driver record, will remind the licensee of the Department's power of suspension and will urge the licensee to make every effort to drive safely at all times.

7.10 Driver Improvement Questionnaire - Any licensee whose record shows a total of nine (9) to eleven (11) points will be requested to complete a Driver Improvement Questionnaire. This questionnaire will be mailed to the licensees most recent drivers license address on file with the Department and

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pursuant to the provisions of West Virginia Code §17A-2-19, the licensee shall be considered as having been given notice upon expiration of four days from mailing. The questionnaire shall be completed in full by the licensee and submitted to the Department within twenty-days from the date of the letter. For the purposes of this section, the postmark on the envelope of the mailed questionnaire shall serve as the measure of compliance with the twenty day requirement.

7.11 Failure to Submit or Complete Questionnaire - within the required time period will result in an order being directed to the licensee to appear for an interview with a representative of the Department in the licensee's county of residence. At the interview, the driving record of the licensee will be reviewed. Failure of the licensee to appear at this interview, without good cause shall be grounds for suspension of the licensee's privilege to operate a motor vehicle for a period of thirty days.

7.12 Accumulation of Twelve or More Points - will result in the Department undertaking a review of the licensee's driving record. This review shall be based on a consideration of all facts and circumstances including the driving record, police reports, accident reports, and convictions for which no point values were recorded as well as any other information pertaining to the licensee on file with the Department. After an evaluation of the licensee's driving record, the Department may: 1) advise the licensee that continued violation of traffic laws will result in suspension of the licensee's privilege to operate a motor vehicle, or 2) place the licensee on probation under such conditions as the Department feels is necessary for a period not to exceed one (1) year, or 3) suspend and/or place on probation the licensee's privilege to operate a motor vehicle for a combined period not to exceed one (1) year. If it is determined that some action is to be taken, it shall be because, as specified in West Virginia Code §17B-3-6, the Department has determined that the licensee has been convicted with such frequency of serious offenses against traffic regulations governing the movement of motor vehicles as to indicate a disrespect for traffic laws and a disregard for the safety of other persons on the highways or is a habitually reckless or negligent driver of a motor vehicle.

7.13 Length Of Time Points Maintained On Driving Record - The total number of points, if any, accumulated by any licensee shall be maintained for a period of two years from the date of the conviction noted on such licensee's driver record. Thereafter, the points shall be eliminated but the record of convictions shall remain so that if at any future time sufficient points are accumulated to cause the Department to review the licensee's driving record, such convictions may be considered in determining the action, if any, to be taken following such review. The point totals accumulated by any licensee who, after review, is placed on probation or suspended following review, or who is placed or remains on probation following a hearing, or is or remains suspended following a hearing, in accordance with the provisions of Section 7.15 hereof, shall be eliminated at the expiration of the suspension and/or probation period. However, the record of convictions shall remain so that if at any future time sufficient points are accumulated to cause the Department to review the licensee's driving record, such convictions may be

considered in determining any action, which may be taken.

7.14 Effective Starting Time For Period Of Suspension - The suspension of any operator's or chauffeur's license under the Driver Improvement Program shall be effective ten days from mailing of the notice of suspension. Eligibility for reinstatement shall be calculated in accordance with Department of Motor Vehicles Rule Series 16, Eligibility for Reinstatement Following Suspension or Revocation.

7.15 Hearings - In accordance with the provisions of West Virginia Code §17B-3-6, any licensee whose license is suspended or placed on probation shall be entitled to a hearing. The request for any such hearing shall be made in accordance with the provisions of Department of Motor Vehicles Rule, Series 1, Administrative Due Process, and the hearing shall be conducted as provided in said rule. When a hearing is requested, the Department shall give the licensee notice of the time and place of hearing. The hearing shall be held as early as practical. The Commissioner may postpone or continue any hearing on his own motion or upon the application of the licensee for good cause shown. The notice of hearing shall advise the licensee of the matters to be considered at such hearing. Upon such hearing the Department shall either rescind its order of suspension or probation or, affirm the suspension or probation of such license. If the suspension is rescinded, but the Department feels that some lesser action is appropriate, the Department may place the licensee on probation under conditions established by the Department for a period not to exceed one year from the date of rescission of the suspension.

7.16 Judicial Review - Any licensee whose operator's or chauffeur's license is, or remains, suspended after a hearing held in accordance with the provisions of this Section or Department of Motor Vehicles Rule, Series 1, or who after such a hearing is placed, or remains, on probation under conditions established by the Department, shall, be entitled to seek judicial review in accordance with the provisions of West Virginia Code §29A-5-4 and any other remedies provided by law for the review of the action taken by the Department.

7.17 Applying For Reinstatement, Or Relief Of Probation - Any licensee whose license is suspended, or who is placed on probation may at any time during the period of suspension, or probation request reinstatement of such suspended license, or to be relieved from such probation.

Upon receipt of any request, the Department may make an investigation as deemed appropriate and may amend the previous action.

§91-5-8. Driver Improvement Clinics

8.1 Procedures - Driver Improvement Clinics are conducted at various times and locations throughout the State. The course not to exceed fifteen hours must be approved by the West Virginia Department of Motor Vehicles. The instructors conducting these clinics must be certified by the approved organization.

8.2 Points To Be Deducted Upon Successful Completion - Attendance at any Driver Improvement Clinic must be voluntary on the part of the licensee; however, on successful completion of a course not to exceed fifteen hours, three points will be deducted from the total points shown on the record of the licensee. The privilege of deducting points for completing a course will be permitted one time only and only if the licensee has eleven (11) points or less, and has no outstanding violations which would place the licensee over the eleven (11) point level. No points will be deducted from any licensee's record who may have attended and received a certificate from a clinic prior to accumulating any points on the licensee's driving record.

A certificate must be presented from the instructor of the clinic to the Department of Motor Vehicles, showing that the course has been completed by the licensee before the points can be removed from the record.

Although three points will be subtracted, the record of all convictions involving motor vehicles will remain so that if at any future time sufficient points are accumulated to cause the Department to require another review, the conviction for which the points were eliminated may be considered along with all other convictions of record in the Department in determining the action, if any, to be taken following such review.

§91-5-9. Procedures For Medical And Driving Re-Examination Of Licensed Drivers

9.1 Statutory Provisions - In accordance with West Virginia Code §17B-3-7, the Department of Motor Vehicles may require a re-examination of a licensed operator or chauffeur.

The Department, having good cause to believe that a licensed operator or chauffeur is incompetent or otherwise not qualified to be licensed, may upon written notice of at least five days require the licensee to submit to an examination. Upon the conclusion of the examination, the Department shall take action as may be appropriate and may suspend or revoke the license of such person or may issue a license subject to restrictions as provided under West Virginia Code §17B-2-10. Refusal or neglect of the licensee to submit to the examination shall be grounds for suspension or revocation of the license.

9.2 Procedures - The notice of re-examination to the licensee shall be mailed to the licensee's most recent driver license address on file with the Department of Motor Vehicles and shall be mailed by certified or registered letter. The notice shall contain the time and place designated for the re-examination and, also, shall contain a brief explanation that a suspension may be imposed for failure to appear and submit to the re-examination as directed by said notice.

The re-examination shall consist of three parts. The first part covering physical qualifications shall consist of a vision test and color blindness test and an inquiry into any physical disability. In addition to the physical qualifications, the examining officer shall be required to conduct a personal interview with the licensee.

The second part of the re-examination shall consist of a written test composed of questions of equal value. A minimum of 70% of the questions covering motor vehicles laws, rules of the road, highway warnings, traffic signs and signally devices will be required to pass the re-examination. The

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written test may be administered verbally if the licensee is determined by the examiner to be illiterate.

The reference document for the material on the test shall come from the official Driver's Handbook as prescribed by the Commissioner of the Department of Motor Vehicles.

The third part of the re-examination shall be the driving test that is given to new applicants applying for driver's licenses in this state. A passing score shall be the same as required for new applicants. The driving test shall not be given if the licensee fails to meet the minimum physical standards as set forth by the Commissioner of the Department of Motor Vehicles.

If the licensee fails the re-examination, the license will be suspended indefinitely upon notice from the Department of Motor Vehicles. The notice shall be sent by certified or registered mail and the suspension shall be effective four days after the date of the suspension order.

The licensee shall not be eligible for a second re-examination until the expiration of thirty days from the date the license was surrendered to this Department. The licensee must make a request, by letter or in person, to the Department of Motor Vehicles, for the opportunity to take subsequent re-examinations.

If a licensee fails a second re-examination, the licensee will not be eligible for a re-examination until sixty days have expired from the date of the previous re-examination. If a licensee fails a third re-examination, the licensee will not be eligible for the fourth re-examination until six months have elapsed. Failure of four consecutive re-examinations shall be grounds for permanent revocation and the licensee will not be eligible for additional testing until one year from the last re-examination date.

If the licensee fails to pass the re-examination because of failure to meet the visual qualifications, no further examination shall be granted until adequate evidence of visual improvement has been submitted.

Upon showing of good cause the Department may request any licensee to submit a medical report of a recent medical examination. The report must be submitted on forms prescribed by the Commissioner of Motor Vehicles in accordance with Section 3 of this rule.

After review of the submitted medical report, the Commissioner shall determine whether or not the license should be suspended in accordance with West Virginia Code §17B-3-7.

If the driver's license is suspended because of a physical condition and a satisfactory medical report is subsequently submitted, the Commissioner may require the licensee to submit to a re-examination of the licensee's driving ability before the driver's license is reinstated.

Refusal or neglect of the licensee to submit to such driver re-examination or physical examination, or both, requested in accordance with the provisions of West Virginia Code §17B-3-7, shall be grounds for suspension or revocation of the driver's license.

§91-5-10 Suspension or Revocation Following Notice of Returned Check

10.1 Statutory Provisions - West Virginia Code §17A-2-16 authorizes the Department to suspend or revoke any and all registration cards, permits, operators, and chauffeur licenses and registration plates issued to the

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Legislative Rule 17A-2
Series 5, Sec. 10

person, firm or corporation by whom or on whose account any such fee or tax shall have been determined to remain unpaid after such reasonable notice and demand. West Virginia Code §17A-2-23 authorizes the Department to apply a penalty fee in addition to any other penalty imposed by the West Virginia Code.

10.2 Determination of Unpaid Fee or Tax - Upon receipt of any check returned to the Department unpaid for any reason, the Department shall deem such fee or tax unpaid. If after reasonable notice the fee or tax remains unpaid, the Department shall suspend and/or revoke any and all registration cards, permits, operators and chauffeurs license and registration plates issued to the person, firm or corporation in accordance with West Virginia Code §17A-2-16.

10.3 Reasonable Notice and Demand - Upon the Department's receipt of a check or checks which are returned unpaid for any reason by the maker's financial institution, the maker of the check and the licensee or registrant, if different from the check maker, shall be mailed a notice of proposed suspension or revocation. Said notice of proposed suspension or revocation shall give the check maker ten (10) days to redeem the face amount of the check and pay any penalty fees.

10.4 Suspension or Revocation - If after ten (10) days, the account remains unpaid, the proposed suspension or revocation of any and all licenses or registrations shall become effective. The licensee or registrant has ten (10) days to surrender the suspended or revoked licenses or registrations to the Department.

10.5 Failure to Surrender Documents - In accordance with the provisions of West Virginia Code §17A-9-7 and §17B-3-9, the Department shall notify the Superintendent of Public Safety to secure possession of such documents which the licensee has failed to surrender and return same to the Department.

10.6 Administrative Hearing - Upon the written request of the licensee or registrant within ten (10) days of the date of mailing of the notice of proposed suspension, or revocation the Commissioner will afford the licensee the opportunity for an administrative hearing. The scope of the hearing shall be limited to whether or not the fee or tax in question has been paid to the Department. The Commissioner may postpone or continue any hearing on his own motion or upon the application of the licensee for good cause shown.

10.7 Penalty and Reinstatement Fee - The provisions of West Virginia Code §17A-2-23 provides for a penalty fee for any returned checks. The provisions of West Virginia Code §17A-9-7 and §17B-3-9 provide for a reinstatement fee of suspended or revoked licenses and registrations. The provisions of West Virginia Code §17A-9-7 and §17B-3-9 also provide for an additional fee if the Department of Public Safety is ordered to secure the suspended or revoked licenses or registrations.

10.8 Payment - Payment of all fees required under the provisions of

these rules shall be by certified check, money order or cash.

§91-5-11 Suspension Under Nonresident Violator Compact

11.1 Statutory Provisions - West Virginia Code §17B-1C-1 authorizes this State's entry into the Nonresident Violator Compact. In accordance with these provisions each compact member state agrees to allow motorists to accept a traffic citation for certain violations and proceed without delay, posting of bond or payment of fine regardless of whether the motorist is a resident of the jurisdiction in which the citation was issued.

11.2 Failure to Comply - Under the provisions of the Nonresident Violator Compact, each member state is required to suspend the operating privileges of its drivers who fail to comply with the terms of certain citations issued by other compact states.

11.3 Notification - Upon notification of noncompliance from another compact state, the licensee is sent a proposed order of suspension to the licensee's address of record by certified mail, return receipt requested, the proposed order of suspension shall indicate that the Department must receive proof of compliance with the terms of the citation within forty-five (45) days.

11.4 Proof of Compliance - Proof of compliance shall mean certification from the out of state court having jurisdiction that the fine and court costs have been fully satisfied or a certification from the court showing the citation was dismissed, or adjudicated not guilty. Proof of compliance shall not mean personal representation, copies of money orders, personal checks, or certified checks.

11.5 Failure to Respond - If the department does not receive proof of compliance within the required forty-five (45) days, the licensee's privilege to operate a motor vehicle will be suspended until such time as proof of compliance with the terms of the citation is received. If the licensee does not surrender the license to the Department of Motor Vehicles within ten (10) days of the effective date of suspension, the Department shall order the Department of Public Safety to secure such license in accordance with West Virginia Code §17B-3-9.

11.6 Administrative Hearing - Upon the written request of the licensee within ten (10) days of receipt of the proposed order of suspension, the Commissioner will afford the opportunity for an administrative hearing. The scope of the hearing shall be whether or not the person having a license suspended is the person to whom the citation was issued.

11.7 Reinstatement - Subsequent to the suspension of driving privileges for failure to comply with the terms of a citation from a compact member state, penalty fees under the provisions of West Virginia Code §17A-3-9 shall apply. Payment of these fees, in addition to compliance with the terms of the citation in accordance with 11.4 of these rules to the satisfaction of the out of state court is required prior to reinstatement of a suspended driver's license.



FILED

1968 NOV 22 AM 11:48

ARCH A. MOORE, JR.
Governor

**DEPARTMENT OF MOTOR VEHICLES
BUILDING 3, CAPITOL COMPLEX
CHARLESTON, WEST VIRGINIA
25317**

L. W. BECHTOLD
Commissioner
SECRETARY OF STATE

NOTIFICATION OF PUBLIC COMMENT PERIOD

The following persons were sent notices of public comment on proposed changes to Department Administrative Rules, Title 91, Series 5, Section 3:

Mr. Glenn O. Pauley, Director
Winfield Office, DMV
Putnam Village Shopping Center

Mr. Harlan Tetrick, Director
Department of Motor Vehicles
1434 Edwin Miller Boulevard
Martinsburg, WV 25401

Dr. Curtis L. Withrow
General Medical Pavilion
Suite 400
Charleston, WV 25301

Superintendent of Public Safety
725 Jefferson Road
South Charleston, WV 25309

American Automobile Association
4000 MacCorkle Avenue S.E.
Charleston, WV 25304

Dr. Thompson Pearcy
Atlas Building
Quarrier Street
Charleston, WV 25301

Lt. J. R. Bias
Department of Public Safety
Planning and Research

W. Va. Prosecuting Atty's Assoc.
Harry Deitzler, President
Wood County Courthouse
Parkersburg, WV 26101

Dr. Gerald Fonda, M.D.
St. Barnabas Medical Center
Old Short Hill Road
Livingston, NJ 07039

Lt. Gyke
Driver Testing
Department of Public Safety

West Virginia State Bar
Security Building
Charleston, WV 25301

Earl Wolfe
Vocational Rehabilitation
State Capitol Complex

James Albert
Criminal Justice & Highway Safety
Governor's Office of Community
and Industrial Development
Building 1, Room M-146
Capitol Complex

West Virginia Safety Council
1550 4th Avenue
Charleston, WV 25312

Beth Hunter, Asst. Atty. General
Office of the Attorney General
Capitol Complex

Dr. Kenard McPherson
W. Va. Safety & Driver Ed. Assoc.
PO Box 6116
Morgantown, WV 26506

Milton Bennett
Department of Driver Education
Building 6, Room B330
Capitol Complex

W. Va. Prosecuting Atty's. Assoc.
John L. Cummings, 1st Vice Pres.
Cabell County Courthouse
Buckhannon, WV 25201

Paul Stewart
Transportation Department
Department of Education
Building 6, Room B252
Capitol Complex

Delores Martin
Executive Vice President
AAA State Association
40th and MacCorkle Avenue
Charleston, WV 25304

Capitol Press Service
MB 46
State Capitol Complex

Dr. Donald P. Cohen
1007 Quarrier Street
Charleston, WV 25301

West Virginia State Bar Assoc.
Building 1, Room 400
State Capitol Complex

Dr. John B. Markey
415 Morris Street
Charleston, WV 25301



FILED

1960 NOV 22 AM 11:48

ARCH A. MOORE, JR.
Governor

DEPARTMENT OF MOTOR VEHICLES
BUILDING 3, CAPITOL COMPLEX
CHARLESTON, WEST VIRGINIA
25317

L. W. BECHTOLD
Commissioner
DEPARTMENT OF STATE

COMMENTS RECEIVED

The following persons were sent notices of public comment on proposed changes to Department Administrative Rules, Title 91, Series 5, Section 3:

1. Dr. Michael A. Fiery
West Virginia Academy of Ophthalmology
2. David F. Green, Attorney
West Virginia Division of Rehabilitation Services
3. Dr. Gerald Fonda
Low Vision Rehabilitation Center

SYNOPSIS OF COMMENTS AND DEPARTMENT RESPONSE

1. Dr. Fiery, representing the West Virginia Academy of Ophthalmology (WVAO) stated that the WVAO strongly opposes the use of the bioptic telescopic spectacle by applicants to pass the driver testing process. (See Exhibit 1)

The Department agrees with the position of the WVAO, and, through the proposed changes, the Department specifically addresses the question of special lenses or lense arrangements by providing for additional review of applicants or licensees by the Drivers License Advisory Board and designated officers of the Department of Public Safety on a case by case basis.

2. Mr. David F. Greene, an attorney representing the West Virginia Division of Rehabilitation Services suggested language which would specifically include special lense arrangements as being considered in the same context as ordinary corrective lenses. Mr. Green states the proposed rule is discriminatory to persons who use bioptic lenses as an aid for driving. (See Exhibit 2)

The Department opposes the suggested change for the following reasons:

- A. The U. S. Department of Transportation has issued a position statement indicating that it is not discriminatory under the provisions of Section 504 of the Federal Rehabilitation Act for States to prohibit the use of the telescope in driver testing.
- B. The Department opposes licensing persons who must utilize special lense arrangements in order to meet the minimum 20/40 vision standard for driver licensing. Special lense arrangements have remained extremely controversial as a driving aid and are opposed by the American Academy of Ophthalmology.

C. Members of the West Virginia Driver Licensing Advisory Board established in accordance with W. Va. Code §17B-2-7A are unanimous in the belief that each low vision driving application should be reviewed by the Board on an individual basis. Adoption of the suggested change proposed by Mr. Green to the proposed rule would preclude the Board from exercising its statutory responsibility to make individual recommendations based on the best available information. The Department's proposed rule changes would incorporate new procedures which would not only test the applicant's vision through the standard vision screening, but in addition, provide for an additional vision test while a passenger in a vehicle driven by designated officers of the Department of Public Safety.

3. Dr. Gerald Fonda representing the Low Vision Rehabilitation Center submitted comments and materials strongly opposed to the licensing of drivers with bioptic lenses (Exhibit 3 incorporates the most relevant information submitted by Dr. Fonda). Dr. Fonda directed comments opposing the traffic environment vision test.

The Department suggests that Dr. Fonda assumed that the traffic environment vision test required the applicant to drive. The traffic test would be conducted with the applicant as a passenger, allowing designated officers of the Department of Public Safety to test and observe the applicant's vision.


L. W. Bechtold, Commissioner



The West Virginia Academy of Ophthalmology



President
Michael A. Fiery, M.D.
Huntington, West Virginia

Vice President
E.G. Cadogan, M.D.
Fairmont, West Virginia

Secretary-Treasurer
Ivan R. Schwab, M.D.
Morgantown, West Virginia

NATIONAL SPRING MEETING

AT

THE
Greenbrier

APRIL 23-26, 1989

Director
Samuel A. Strickland, M.D.
Charleston, West Virginia

Director
Moseley H. Winkler, M.D.
Charleston, West Virginia

Director
John V. Linberg, M.D.
Morgantown, West Virginia

October 21, 1988

Steven O. Dale
Department of Motor Vehicles
1800 Washington Street East, Room 80
Charleston, WV 25317

Dear Mr. Dale:

The West Virginia Academy of Ophthalmology's Executive Board and Officers have reviewed the proposed legislative rule amendment, Series 5, section 3, regarding denial of driving privileges for medical reasons. We strongly oppose the use of the bioptic telescopic spectacle. We feel that no person should be allowed to pass the driving test on the basis of vision with the telescope. I hope that you will consider our concern for the safety of all West Virginians and not allow bioptic telescopic spectacles be used by drivers in West Virginia.

Sincerely yours,

Michael A. Fiery, M.D.
MAF/bg

Copy to: Ivan Schwab, M.D.
Department of Ophthalmology
WVU Medical Center
Morgantown, WV 26506

(EXHIBIT 1)

MEMORANDUM

October 5, 1988

TO: L. W. Bechfold, Commissioner
Joseph E. Lobuts, Interim Director, (FYI)
James E. Jones, Deputy Director, Program Operations (FYI)
John P. Harrison, Administrator, WVRC (FYI)
Chuck Huss, Personal ADJ/TNG-Blind, WVRC (FYI)

FROM: David F. Greene, Attorney *DFG*
West Virginia Division of Rehabilitation Services

SUBJECT: Proposed Ruling on Series 5, Section 3
Denial of Driving Privileges for Medical Reasons

The wording in Section 3.4 Standards for Medical or Vision Review, Sub Section (2) needs to be changed to read as follows, "Special equipment or special lens arrangements shall be considered conventional for the purposes of this rule". The way it now reads is discriminatory to those individuals who must use a special bi-optic lens as an aid when they drive.

RECEIVED

OCT 17 1988

COMMISSIONER'S

(EXHIBIT 2)

LOW VISION REHABILITATION CENTER

SAINT BARNABAS MEDICAL CENTER

OLD SHORT HILLS ROAD, LIVINGSTON, N.J. 07039

(201) 533-5123

Gerald Fonda, M.D., Director
Edwin Miller, M.D.
Peter Nussbaum, M.D.
Sandra Kantorek, O.D.

October 18, 1988

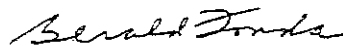
Mr. Steven O. Dale
Department of Motor Vehicles
1800 Washington Street, East, Room 80
Charleston, WV 25317

Dear Mr. Dale:

The proposed legislative rule 17A-2-9, Series 5, section 3 should not be amended, primarily because the Traffic Environment Screening (TES) should be deleted. The use of the bioptic telescopic spectacle is a hazard and is not needed.

The reasons why the legislative rule should not be amended are listed in the enclosed letter to Mr. Bowles and references.

Sincerely,



Gerald Fonda, M.D.

GF:mdo
enc.

cc: copy of letter to Mr. J. A. Bowles

(EXHIBIT 3)

LOW VISION REHABILITATION CENTER

SAINT BARNABAS MEDICAL CENTER

OLD SHORT HILLS ROAD · LIVINGSTON, N.J. 07039

(201) 533-5123

COPY

Gerald Fonda, M.D., Director
Edwin Miller, M.D.
Peter Nussbaum, M.D.
Sandra Kantorek, O.D.

October 17, 1988

Mr. Jeff Bowles
Commercial Driver's License Coordinator
Dept. of Motor Vehicles
1800 Washington Street, East
Charleston, West Virginia 25317

Dear Mr. Bowles:

Thank you for your letter of September 30, 1988. I read the "Traffic Environment Screening (TES)" which is hazardous to the driver and those sharing the road. Enclosed is evidence that the driver is blinded to traffic for a distance of 132 ft. at 30 mph. The reprint shows that approach magnification is safer.

The driver evaluator specialist such as Mr. Huss or Mr. Ramsey who have no training in vision are not qualified to evaluate the driver's functional vision. Only an ophthalmologist or optometrist is qualified to evaluate vision. To follow the procedure of the TES using the telescope is dangerous and not needed to see traffic lights and recognize traffic symbols. The fact is that people with 20/200 can recognize traffic symbols at 200 ft. Stopping distance is 149 ft. at 40 mph. Traffic lights under favorable conditions can be recognized at 600 ft. depending upon the weather conditions. This is evidence that a person can drive safely with 20/200 vision with normal peripheral vision. People with red-green color vision impairment can distinguish red from green traffic lights.

The only change in previous vision standards and new administrative changes is; "Additionally, the commissioner may prescribe a traffic environment vision test be administered to the person by designated officers of the Department of Public Safety". This statement should be deleted because the use of the BTS is hazardous and not needed for reasons stated in previous paragraph. Presently 16 individuals, five of which have vision 20/70 or better, have passed the vision standards by the use of telescopic spectacles at the cost of \$12,000 each. A restricted and conditional license as stated on the enclosed page is more reasonable.

Mr. Jeff Bowles

October 17, 1988

Color Vision: No need to test color vision because 8% of males have a red-green impairment, and only one in a thousand females have a red-green impairment. Some yellow is combined with the red, and some blue with the green traffic lights so that the red-green impaired people tell red from green because the red appears darker than the green. Why test color vision when there is no need and there is no treatment?

Depth Perception: What test to use, and what is fail, pass criteria? People with one seeing eye or those who do not use the eyes together (binocular vision) have less perfect depth perception but it is adequate for judging distance. Wily Post was a one-eyed pilot.

Peripheral Vision Test:

1. There is no screening peripheral testing apparatus that has been evaluated as reliable.
2. The tester needs to be trained to perform this test which is not practical.

However, peripheral visual requirements are essential otherwise a person with a peripheral field defect can pass the vision standards with tunnel vision or blind on one side (hemianopsia). The ophthalmologist or optometrist can report the peripheral field defect so that a driver's license cannot be issued because the person fails the peripheral field test requirement.

Mr. Bowles, may I suggest that Commissioner Bechtold request the Optometric Society and the Ophthalmological Society to submit suggested Visual Requirements. A meeting of representatives of optometry and ophthalmology with the Department of Motor Vehicles could write good requirements which would set an example for other states. I would be glad to be present. Since I have been on the Medical Advisory Board to the New Jersey Division of Motor Vehicles since 1977 I have had some experience in many phases of vision as related to the needs of the Department of Motor Vehicles.

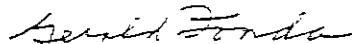
I am dedicated to the formulation of safe, human and reasonable vision standards.

Mr. Jeff Bowles

October 7, 1988

West Virginia is fortunate that Dr. George Weinstein is professor of ophthalmology because his knowledge is profound, a man of great stature and highly respected by the profession. I have never heard of any statement made which was unfavorable.

Sincerely,



Gerald Fonda, M.D.

GF:mdo

EVIDENCE THAT BIOPTIC TELESCOPIC SPECTACLE (BTS) IS
HAZARDOUS FOR THE DRIVER WHO USES THEM AS
WELL AS A DANGER TO THOSE WITH WHOM HE SHARES THE ROADS

The paradox is that the driver passes the vision test looking through the telescope but cannot drive looking through the telescope.

Why wear the BTS continuously when the driver with limited vision generally has no need to read road signs? The most the BTS could be used on a very special occasion is 1.6% of the time.

Driver cannot pass the visual field test when looking through the telescope.

Evidence that Bioptic Telescopic Spectacle (BTS)
is a Hazard for Operating a Motor Vehicle

1. Driving blind to traffic for a distance of 264 ft. while reading the road sign through the telescope.
2. Accident rate for users of the BTS is 1.5 times greater than for non-users in California.
3. Accident rate for users of the BTS is 3 times greater than for non-users in New York.
4. Accident rate for users of the BTS is 1.8 times greater than for non-users in Maine. Two fatalities were caused by a driver wearing the BTS.
5. Accident rate for users of the BTS is 1.34 times greater than for non-users in Texas.
6. Mr. G. in Iowa was involved in eight of nine accidents while wearing the BTS.

Evidence that Bioptic Telescopic Spectacle (BTS)
is Best for the Man Who Sells Them

1. In 1978 the revenue factor would be 502 million dollars if prescribed to only one-half of the 1.5 million legally or partially blind at one-half the minimum cost of \$1,500.
2. In 1977, in New Jersey, it was going to cost an albino \$1,271 to be fitted with a BTS that cost me \$275.
3. Since 1968, more than 1,300 BTS have been sold to pass the vision test. This means that more than \$1,300,000 has been paid for a hazardous device to pass the vision test.
4. An Ophthalmologist said: "Jerry, why fight them; prescribing bioptic telescopic spectacles (BTS) to pass the vision test is better than cataract surgery. No headaches."

Special Communication

Bioptic Telescopic Spectacle Is a Hazard for Operating a Motor Vehicle

Gerald Fonda, MD

• The primary purpose of the bioptic telescopic spectacle is to permit the driver to pass the visual requirement to operate a motor vehicle. It is paradoxical that a driver can pass the vision test only by the use of a telescope but that he cannot drive while looking through the telescope. Rather, he must drive with his limited vision (sometimes legal blindness) while looking through the carrier lens. He can use the telescope only for reading a sign or for distinguishing an object, and even then he must lower his head to look through it. This is hazardous: he becomes thus "blind" to the traffic while reading the sign through the telescope. Such a driver could never pass a peripheral vision test due to the blind areas created in the peripheral field. It is more humane and reasonable to grant a waiver for the impaired vision than to compel a handicapped person to purchase a bioptic telescopic spectacle to pass the visual requirement.

(Arch Ophthalmol 1983;101:1907-1908)

The primary purpose of the bioptic telescopic spectacle (BTS) is to permit the driver to pass the visual requirement to operate a motor vehicle. The paradox is that the driver can pass the vision test only by looking through a telescope, but he cannot drive while looking through this device.

The BTS consists of a telescope mounted in the upper part of the spectacle or carrier lens. The wearer looks through the carrier lens at all times, except when he lowers his head to look through the telescope (Fig 1).

The driver must hold his head higher than is natural so that he can look under the telescope, a position that is awkward and tiring. He cannot walk, let alone drive, while looking through the telescope because objects appear

large and close and motion is magnified when the head is moved. All perspective and depth perception are destroyed.

The two hazards with the use of the BTS are the magnified field of the telescope (8°) and the total surrounding blind area (24°). The greater hazard is the blind area in the field of vision (Figs 2 and 3).

Figure 2 shows that 6° magnified field seen through the telescope and the surrounding 14°-diameter blind area in the field. At a distance of 60 m (200 ft), the 6° magnified field seen through the telescope corresponds to a diameter of 6.3 m (21 ft), the width of a residential street. The blind area of 14° in the field of vision corresponds to a diameter of 15 m (50 ft) at a distance of 60 m (200 ft). This magnification will occlude the sidewalks and driveways on each side of the road while the driver is looking down the center of the street through the telescope. When the telescope is used on a rural highway to read a sign, the driver must locate the sign through the spectacle lens and then lower his head to read it through the telescope, as shown in Fig 3.

The driver can see the complete field of view through the spectacle lens. When he lowers his head to read the signs through the telescope, however, he becomes blind to the traffic. As he first looks through the telescope at an object 120 m (400 ft) away, the diameter of the field seen through the telescope is 14.4 m (48 ft), and the total blind area is 49.4 m (168 ft). While he is driving and reading the sign through the telescope, however, he is moving up to a distance of 60 m (200 ft) from the sign. At this distance, the diameter of the field seen through the telescope is 7.2 m (24 ft). The total diameter of the blind area is 50.4 m (168 ft). This blind area is relative to the traffic at 120 m (400 ft) and beyond, as is demonstrated by Fig 3.

A vehicle traveling at the rate of 60 mph covers a distance of 26.3 m (88 ft)/s. This is evidence that the driver

is "blind" to the traffic for a distance of 79.2 m (264 ft). If a vehicle approaches from the opposite direction at the same speed, this doubles the distance at which he is driving blind because the driver is blind to the distance that he covers plus the distance covered by the approaching vehicle. It takes about 3 s for the driver to change fixation from the carrier lens to the telescope, read the sign, and refixate through the spectacle lens.

I have been experimenting with the X3 Feinbloom BTS, the Feinbloom X3 expanded-field telescope, and the Walters X3 BTS while driving. I have found this to be a frightening experience, one that discourages me from practicing it too often. I do have normal vision in each eye.

No training will make a driver safe who has such a large blind area in his field of vision. A driver needs both central and peripheral vision to operate a motor vehicle. Most drivers with a visual acuity of less than 20/40 must use a retinal area within 10° of their central vision to read signs and recognize objects and pedestrians. The driver must use his peripheral vision to see the traffic (especially moving objects) on the side while using his central vision to see the road ahead. The central visual acuity must usually be 20/100 or better. Peripheral visual acuity decreases from 20/100 to 20/4,000 in the far periphery. The principal function of peripheral vision is to permit a person to recognize a moving object so that he will look at it with his central vision to see it clearly.

A peripheral visual requirement would automatically disqualify a driver wearing the BTS, because the BTS creates a large blind area in the peripheral field of vision.

The pressing reason for granting even a limited license is to enable a

Fig 1.—Bioptic telescopic spectacles (X3).



Accepted for publication May 23, 1983.
From the Low Vision Service, Saint Barnabas Medical Center, Livingston, NJ.
Reprint requests to the Low Vision Service, Saint Barnabas Medical Center, Livingston, NJ 07039 (Dr Fonda).



June 28, 1977

American Academy of Ophthalmology, 1977

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Minneapolis, Minnesota 55412
(612) 724-9260

Gerald Fonda, M.D.
Secretary, American Committee on Optics and Visual Physiology
551 Millburn Avenue
Short Hills, New Jersey 07078

Dear Dr. Fonda:

Please be advised that on June 10, 1977, the Executive Committee of the American Academy of Ophthalmology, a division of the American Academy of Ophthalmology and Otolaryngology, adopted the following resolution:

Drivers of Motor Vehicles should not be permitted to pass the vision test by the use of telescopic devices because the limitations offset its advantage.

Sincerely,

Bruce E. Spivey, M.D.
Executive Vice President Designate

:jh
cc: Bradley R. Straatsma, M.D.
David J. Noonan

topics as professional liability, surgical cost controls, continuing education recertification and relicensure, federal legislation, residency training, and medical manpower. The session on continuing education recertification and relicensure indicated that none of the surgical subspecialties have established a firm, workable method for recertification and relicensure. All of the specialty boards have taken the initiative, however, in establishing tentative plans. Most of these plans are centered around an initial voluntary approach which will subsequently become mandatory. It was apparent that most boards would depend upon a combination of practice audit, continuing medical education, and cognitive examination. It appears that final plans for appropriate evaluation of individual competence will require a great deal more study.

The intricacies of the federal legislation were discussed in detail. An overview of the federation legislative process was discussed, which emphasized the continuing growth and complexity of bureaucracy. The proliferation of agencies and the shifting responsibility make it difficult to keep up with the federal organization as it relates to legislation on health care. In addition, the orientation of the media may provide unfavorable interpretations, making the medical profession subject to criticism from many sectors. Studies generated by the surgical profession regarding monitoring procedures and quality care have often been misinterpreted. The discussion group pointed out a need for improved information and crystalization of these matters, particularly related to surgery.

An excellent ophthalmic program emphasizing the orbit, lids, and lacrimal apparatus was conducted this year, and the ocular portion of the 1977 meeting will be concerned with ocular and adnexal trauma. The next American College of Surgeons Clinical Congress will be held in Dallas from Oct 17 through 21, 1977.

REPORT OF THE AMERICAN COMMITTEE
ON OPTICS AND VISUAL PHYSIOLOGY

ROBERT D. REINECKE, MD

GEORGE W. WEINSTEIN, MD

IRWIN SIEGEL, PhD
Academy Representatives

I. Purpose of the Committee

The primary aims of the American Committee on Optics and Visual Physiology are to raise

standards within the specialty of ophthalmology and in related fields and, by means of research and systematic investigations, to increase knowledge and provide scientific facts concerning controversial subjects. The Committee serves in a consulting capacity, as a fact-finding body, and as a source of reliable information.

II. Members of the Committee

The membership consists of three representatives from each of the four parent societies: the American Academy of Ophthalmology and Otolaryngology, the American Ophthalmological Society, the Section on Ophthalmology of the American Medical Association, and the Association for Research in Vision and Ophthalmology. Each parent society contributes \$300 yearly for secretarial and miscellaneous expenses.

III. Current Activities

The Committee met on Oct 6, 1976, in Las Vegas.

Copies of the interprofessional standard for visual field testing are to be mailed to all departments of ophthalmology in the United States.

Elution tests from hard contact lenses have been done, but specific results were not available at the meeting. The results of these tests are to be obtained by Jay M. Enoch, PhD, and reviewed at the 1977 meeting of the Committee.

As per the request of Louise L. Sloan, PhD, red goggles with side shields should be made available in all sizes for patients with abnormalities. The American Optical Company is encouraged to extend their range of sizes to include those suitable for small children in keeping with this recommendation.

The Committee reiterated its opinion that automobile drivers should not be permitted to pass the vision test by the use of telescopes because of the many optical liabilities of such devices.

The report of last year is to be corrected in that neither photogray nor photosun glasses are appropriate for driving at night or under mesopic conditions.

A symposium on myopia, including orthokeratology, would be appropriate in the near future.

Military requirements are recommended, and these will be forwarded to the organization requesting the above standards.

IV. Future Activities

The Committee plans to continue to have an annual meeting to respond to queries within