

Chapter Trans 108

**DRIVER LICENSING OF PERSONS WHO HAVE
EXPERIENCED EPISODES OF ALTERED CONSCIOUSNESS
OR LOSS OF BODY CONTROL**

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Trans 108.01 Purpose and scope. (1) The purpose of this chapter is to establish the department's administrative interpretation of ss. 343.09, 343.13 and 343.16 (2), Stats., in relation to the issuance of motor vehicle operator licenses to persons who have experienced episodes involving altered consciousness, or convulsive disorders resulting in altered consciousness or loss of body control, including but not limited to epilepsy.

(2) Episodes of altered consciousness related to a specifically identifiable medical condition that is not a neurological disorder, including but not limited to, metabolic diseases such as diabetes, cardiovascular diseases, and alcohol and other drug abuse will be reviewed under criteria outside this chapter. Loss of body control resulting from other neurological disorders, including but not limited to cerebral palsy, multiple sclerosis and muscular dystrophy, will also be reviewed under criteria outside this chapter.

(3) This chapter applies to all persons applying for or holding any license to operate a motor vehicle and to actions of the department in carrying out the driver licensing responsibilities under ch. 343, Stats.

History: Cr. Register, May, 1981, No. 305, eff. 6-1-81; emerg. am. (1), eff. 9-4-87.

Trans 108.02 Definitions. In this chapter:

(1) "Altered consciousness, means a state of awareness characterized by loss, distortion, or unresponsiveness to the impressions made by the senses.

(2) "Department" means the Wisconsin department of transportation.

(3) "Episode" means any incident or segment of time involving altered consciousness or loss of body control.

(4) "Hazardous material" means a material determined by the U.S. secretary of transportation to be capable of posing an unreasonable risk to health, safety and property and identified by the letter "E" in column one of the hazardous materials table in 49 CFR. 172.101.

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(5) "Licensing action" means any action by the department involving the denial, cancellation, restriction, or issuance of a license under this chapter.

(6) "Loss of body control" means involuntary movements of the body characterized by muscle spasms or muscle rigidity or loss of muscle tone or muscle movement.

(7) "Medical condition" means any condition affecting a person's health for which a person is receiving medical treatment, or for which medical treatment is usually prescribed.

(8) "Medical review board" or "review board" means a medical review board established under ss. 343.09 (4) and 343.16 (2), Stats.

(9) "Neurological disorder" means a disorder of the body's nervous system characterized by a disturbance of sensory, motor or coordinating functions.

History: Cr. Register, May, 1981, No. 305, eff. 6-1-81; renum. (1) to (8) to be (2), (3), (5), (8), (7), (1), (6) and (9), cr. (4), Register, August, 1985, No. 356, eff. 9-1-85; emerg. renum. (2) to (9) to be (3) to (10) and am. (9), cr. (2), eff. 9-4-87.

Trans 108.03 Information to be considered in licensing actions. (1) The medical review boards when making recommendations, and the department when taking licensing action, shall consider the following information:

(a) Information on alteration of consciousness or loss of body control (blackout, seizure, spell, attack, episode, etc.):

1. Age at onset.
2. Type of episode.
3. Frequency.
4. Dates, times, and circumstances of episodes, especially last three.
5. Aftereffects (e.g. paralysis, impaired movement, etc.).
6. Duration.
7. Cause.
8. Aura; and

(b) Related medical information:

1. Electroencephalograph findings.
2. X-ray findings.
3. Other laboratory findings.
4. History of hospitalization.
5. Side effects of medication(s).
6. Current medication(s)—dosage, serum levels, etc.; and

(c) Applicant knowledge:

1. Knowledge of stress factors which contribute to lapse of consciousness—including insufficient sleep, alcohol and tension.

2. Knowledge of anticonvulsant medications and effects.

3. System for taking medication.

4. Applicant opinion regarding cause of episode; and

(d) Physician information:

1. Physician recommendations.

2. History of physician care.

3. Physician discussions with applicant of control of episodes.

4. Diagnosis by physicians; and

(e) Medical review board recommendation.

(f) Applicant driving needs:

1. Current occupation.

2. Basic driving needs, including but not limited to, the distance from the applicant's home to that person's doctor, place of employment, shopping districts, or other necessary locations.

3. Working hours; and

(g) Reports of driver condition or behavior; and

(h) Driver record. Traffic convictions for driving while intoxicated, inattentive driving, reckless driving, failure to have vehicle under control, failure to yield right of way or other convictions where there is evidence they were caused by an episode. Accidents that have been caused by an episode.

(2) The types of information described in sub. (1) (a) through (d) shall be included in medical reports required for the administration of licensing under this chapter. The forms shall be furnished to the applicant, licensee or the examining physicians free of charge.

(3) Persons may be required to appear before a medical review board or obtain additional medical information if the department determines the information contained in the medical report is not adequate to make the licensing decision.

History: Cr. Register, May, 1981, No. 305, eff. 6-1-81; emerg. am. (1) (c) 2., eff. 9-4-87.

Trans 108.04 Medical reports; filing requirements. (1) Persons who have been medically diagnosed as having epilepsy shall file medical reports with the department as required by s. 343.09, Stats.

(2) Persons who have experienced only a single, nonrecurring episode and meet the requirements of Trans 108.06 (1) (c), are required to file medical reports every 6 months for 2 years since their single episode.

(3) Persons who are not subject to sub. (1) or (2) shall file medical reports every 6 months for 2 years and annual medical reports thereafter until 5 years have elapsed since their last episode.

(4) In addition to the reporting requirements in subs. (1) to (3), the department may require persons to file medical reports at other times when there is reason to believe medical information on file with the department is not current or complete.

(5) All physician medical reports must be based on an examination by the physician within the previous 3 months.

(6) Medical reports required under this section must be submitted within 30 days from license application, or department request, unless an extension has been granted by the department.

History: Cr. Register, May, 1981, No. 305, eff. 6-1-81; emerg. r. (1), renun. (2) to (6) and am., eff. 9-4-87.

Trans 108.05 Episode reports. Whenever the department learns that an applicant or a licensee may have experienced an episode, it shall require the person to file a medical report which has been filled out by the physician. The department shall review the medical report for the purpose of making a determination that:

(1) The person is diagnosed by the reporting physician as having epilepsy, and the person's licensing eligibility will be reviewed under this chapter; or

(2) The episode was the result of an identifiable neurologically related disorder, but an affirmative diagnosis of epilepsy has not been made, and the person's licensing eligibility will be reviewed under this chapter; or

(3) No specific cause of the episode can be identified, and the person's licensing eligibility will be reviewed under this chapter; or

(4) The episode was the result either of an identifiable medical condition that is not related to a neurological disorder or has been diagnosed as symptomatic of cerebral palsy, multiple sclerosis, muscular dystrophy or a similar disorder, and the person's licensing eligibility will be reviewed under criteria outside this chapter; or

(5) The episode did not occur or was the result of behavior or circumstances wholly unrelated to any medical condition, and no basis for review exists.

History: Cr. Register, May, 1981, No. 305, eff. 6-1-81; emerg. am. (intro.), emerg. r. (1), renun. (2) to (5) to be (1) to (4) and am., eff. 9-4-87.

Trans 108.06 Licensing decisions. After the intitial screening of the medical reports or physician information under s. Trans 108.05, the department shall take licensing action in accordance with the criteria prescribed in this chapter.

(1) **EPISODE WITHIN PREVIOUS 6 MONTHS.** Any person who has experienced an episode within the 6 month period immediately preceding the department's licensing action shall not be permitted to hold a license unless it is found that:

(a) The episode was due to and occurred within 30 days of a deliberate change in or withdrawal of, anticonvulsant medication ordered by the person's physician; and

1. At least 30 days have elapsed since the use of the anticonvulsant medication used to assure control has been resumed; and

2. The person's anticonvulsant blood serum levels are within an established therapeutic range as indicated in a laboratory report; and

3. The person's examining physician certifies to a reasonable degree of medical certainty that episode control has been established; or

(b) Circumstances beyond the person's control prevented obtaining or administering the prescribed medication and the conditions prescribed in par. (a) 1 to 3 are satisfied; or

(c) The person's examining physician indicates that the episode was an isolated occurrence; and

1. The cause of the episode is identified; and

2. The physician believes that another episode is unlikely to occur; and

3. The physician is not treating and has not treated the person with anticonvulsant medication for the cause of the episode; and

4. There is no previous history of any other episode.

(d) Licenses issued under pars. (a) and (b) shall be restricted. Licenses issued under par. (c) shall be unrestricted.

(2) EPISODE WITHIN PREVIOUS 6 TO 24 MONTHS. Any person who has experienced an episode within the 6 to 24 month period immediately preceding the department's licensing action shall be permitted to hold a license, which will usually be restricted, if the department determines from the criteria in s. Trans 108.03 that the person's condition is under control and licensing does not present any significant risk to the safety or welfare of the person or the general public.

(3) EPISODE-FREE FOR MORE THAN 24 MONTHS. Any person who has last experienced an episode at least 24 months preceding the department's licensing action shall be permitted to hold a license, which will usually be unrestricted, if the department determines from the criteria in s. Trans 108.03 that the person's condition is under control and licensing does not present any significant risk to the safety or welfare of the person or the general public.

(4) OTHER SITUATIONS WHEN LICENSING ACTION IS TAKEN. (a) As authorized by s. 343.25 (7), Stats., the license shall be denied or canceled if the person does not provide the medical information required in s. Trans 108.05.

(b) Where there is evidence that an episode has occurred within the past 6 months, immediate licensing action shall be taken based on that evidence. This action shall be taken when:

1. The department receives information from a reliable source, such as a police report, physician report, parent, or spouse that the person has experienced the episode; and

2. This information is substantiated by a second reliable source; and

3. There is other evidence that there is a medical problem, such as prior medical reports or a report of an accident or conviction caused by an episode.

History: Cr. Register, May, 1981, No. 305, eff. 6-1-81; am. (1) (a) and (c) 3., Register, August, 1985, No. 356, eff. 9-1-85; emerg. r. and recr., eff. 9-4-87.

Trans 108.07 Special licenses. (1) **CHAUFFEUR LICENSES.** (a) A person who is episode free for more than 6 months may be permitted to hold a restricted chauffeur license if the department determines from the criteria in s. Trans 108.03 that the person's condition is under control and licensing does not present a substantial risk to the safety of that person or the general public, taking into account:

1. The type of vehicle used;
2. The hours of operation;
3. The routes and distances normally travelled;
4. The type of cargo hauled; and
5. The period of time the condition has been under control.

Note: Under U.S. department of transportation regulations, persons diagnosed as having epilepsy are prohibited from operating motor vehicles in interstate commerce.

(b) Chauffeur licenses issued in accordance with par. (a) are generally restricted until the person is episode free for a period of 10 years, except that a person may be eligible for an unrestricted license if at least 2 years have elapsed since a single episode as specified in Trans 108.06 (1) (c).

(c) In addition to the criteria for restrictions established in par. (a), when a chauffeur license is issued to a person who has experienced an episode it will be restricted so that the person may not transport passengers for hire, nor transport hazardous materials nor operate an authorized emergency vehicle except when.

1. Only a single episode as specified in s. Trans 108.06 (1) (c) has been experienced and at least 2 years have elapsed since the episode, or

2. If not exempt by 1., then only when the person:

- a. Has not had an episode in the past 5 years; and
- b. Has been off anti-convulsant medication for 5 years.

(2) **MOTORCYCLE OPERATOR LICENSE.** A person who is otherwise qualified for licensing under s. Trans 108.06 (1) to (3) may hold an operator's license endorsed for operation of a motorcycle or may hold an operator's license restricted to operation of a motorcycle. Operator's license restrictions apply with equal force and effect to motorcycle operations.

(3) **SCHOOL BUS OPERATOR LICENSES.** In accordance with s. 343.12 (2) (g), Stats., and s. Trans 110.13, persons subject to this chapter shall be considered for school bus licensing when:

1. Only a single episode as specified in s. Trans 108.06 (1) (c) has been experienced and at least 2 years have elapsed since the episode, or

2. If not exempt by 1., then only when the person:

- a. Has not had an episode in the past 5 years, and
- b. Has been off anti-convulsant medication for 5 years.

History: Cr. Register, May, 1981, No. 305, eff. 6-1-81; emerg. am. eff. 3-14-83; am. (1) (a) r. and recr. (1) (b) and (c), (2) and (3), Register, August, 1985, No. 356, eff. 9-1-85; emerg. am. (1) (a) (intro.), (b) and (c), (2), renun. (3) and am., eff. 9-4-87.

Trans 108.08 License restrictions. (1) Licenses held by persons subject to this chapter shall be restricted in accordance with the criteria prescribed in this section. The license restrictions shall be determined by the department as appropriate in each individual case and shall be consistent with the safety and welfare of the person and the general public. The restrictions may include, but are not limited to, the maximum distance that may be travelled to and from the person's residence to place of employment or the time period of operations during any day (for example, operation restricted to daylight hours only).

(2) In establishing the appropriateness of restrictions, the department shall consider:

(a) The relative reliability and success of the measures used, including medication, in achieving episode control; and

(b) The person's general state of health and susceptibility to fatigue; and

(c) The area in which the person generally operates a motor vehicle, taking into account road and traffic conditions encountered; and

(d) The needs of the person to operate a motor vehicle, for example, commuting to a place of employment, travel to medical treatment facilities and the like; and

(e) Availability of alternative transportation; and

(f) Types of vehicles to be driven; and

(g) The period of time the person has not had an episode and has been off anticonvulsant medication.

(3) Restrictions imposed under this chapter shall be in addition to any other restrictions, including corrective lens restrictions, that may be required or appropriate under s. 343.13, Stats., or other provisions of law.

History: Cr. Register, May, 1981, No. 305, eff. 6-1-81; am. (2) (f) and cr. (2) (g), Register, August, 1985, No. 356, eff. 9-1-85; emerg. r. and recr., eff. 9-4-87.

Trans 108.09 Notice of departmental licensing actions. (1) Persons affected by any departmental licensing action shall be given written notice thereof by first class mail sent to the person's mailing address then currently on file with the department.

(2) A notice of license denial or cancellation shall include the specific reasons for the action and information on applicable review and appeal procedures.

History: Cr. Register, May, 1981, No. 305, eff. 6-1-81.

Trans 108.10 Medical review boards. (1) An appearance before a medical review board may be requested by a person:

(a) When the applicability of any of the conditions prescribed in s. Trans 108.06 (1) (a) through (c) are at issue.

(b) To obtain a review of the department's licensing action when a license is denied or cancelled under s. Trans 108.06 (2) or (3).

(c) When a restricted license has been granted and the issue is whether or not an episode occurred.

(d) When the application of s. Trans 108.07 (1) or (3) is at issue, the medical review board may assess the person's medical history and may recommend that an exception to s. Trans 108.07 (1) or (3) be granted by the department if, in the medical review board's medical opinion, the person's medical condition does not impair the person's ability to safely operate a motor vehicle under unrestricted conditions of a chauffeur's license and a school bus license.

(e) Except as provided in par. (d), appearances before a medical review board are not afforded for the sole purpose of reviewing the nature or extent of restrictions imposed on licenses held under this chapter.

(2) The department may request that a person appear before a medical review board when additional medical review and recommendation is desirable in making the licensing decision.

(3) After receiving the recommendations of a medical review board, the department shall make its final licensing decision. Notice of the department's action shall be sent to the person affected within 10 working days after the person's appearance before the medical review board. The notice shall include the medical review board's recommendations and shall state the reasons for the recommendations and department's decision.

History: Cr. Register, May, 1981, No. 305, eff. 6-1-81; emerg. renum. (1) (d) to be (1) (e) and am., cr. (1) (d), eff. 5-19-86; renum. (1) (d) to be (1) (e) and am., cr. (1) (d), Register, November, 1986, No. 371, eff. 12-1-86; emerg. (1) (a) and (3), r. (1) (b), renum. (1) (c), (d) and (e) to be (1) (b) to (d) and am., eff. 9-4-87.

Trans 108.11 Judicial review. (1) Persons aggrieved by the department's actions relating to the imposition of licensing restrictions under this chapter may seek judicial review in accordance with s. 343.40, Stats.

(2) Persons aggrieved by the department's decision based on recommendations of the medical review board to cancel or deny licenses under this chapter may seek judicial review in accordance with s. 343.40, Stats.

History: Cr. Register, May, 1981, No. 305, eff. 6-1-81; am. Register, August, 1985, No. 356, eff. 9-1-85.

Trans 108.12 When license reinstatement fee not required. No reinstatement fee is required if it is found that the person's license was cancelled and the episode that was the subject of the cancellation did not occur or was the result of behavior or circumstances wholly unrelated to any medical condition.

History: Cr. Register, May, 1981, No. 305, eff. 6-1-81.