

375-3-5-.09

Incapacitated Drivers; Procedure. Amended.

(1) No license shall be issued to or retained by any person who is incapacitated due to a physical or mental disability or a confirmed use of drugs or intoxicants, and who, by reason of such incapacity may be unable to operate a motor vehicle with safety upon the public roads or highways of this State.

(2) The Department, upon receipt of a report that a driver may be physically or mentally incapacitated or otherwise not qualified to drive, may at any time upon written notice to the licensee require the licensee to submit medical reports regarding his physical or mental condition to the Department for individual consideration by the Driver's License Advisory Board. The submission of such reports shall be without expense to the State or the Department.

(3) Whenever the Department receives, in writing, information that an operator of a motor vehicle may be unfit to drive due to a physical or mental incapacity, the Commissioner may, in his discretion, authorize Department personnel to investigate the allegations.

(a) After the completion of said investigation, the Department shall determine whether there is evidence to support the allegation that the operator should not drive due to a physical or mental incapacity. If the investigation does not substantiate the allegations, no further action shall be taken by the Department.

(b) If the Department shall determine that there is evidence to support the allegation that the operator of a motor vehicle should not drive due to a physical or mental incapacity, the Department shall send the driver by certified mail with return receipt requested, or by personal delivery, a notice containing the following information:

1. That a person unable to drive safely due to physical or mental incapacity or a confirmed use of drugs or intoxicants may not retain a driver's license under Georgia Law;

2. That a question has arisen as to the operator's capacity to drive;

3. That enclosed medical report forms must be completed by a physician of the driver's choice and returned by the physician directly to the Department of Driver Services within 30 days of receipt and that such reports will be forwarded to the Driver's License Advisory Board for review and evaluation;

4. That, after review of the medical reports, the ~~Driver's License Advisory Board will recommend either retention or reinstatement of~~ Department will make a determination of whether to allow such person to retain or reinstate his or her driver's license, retention or reinstatement of the license with add restrictions to his or her driver's license, or impose a revocation of the license;

5. That the letter may be considered that operator's authority to drive pending subsequent notification from the Department of Driver Services that his driver's license has been retained or reinstated, retained or reinstated with restrictions, or revoked;

6. That, should the driver fail to submit completed medical reports to the Department within 30 days, his driver's license shall be revoked and the operator shall be deemed to have waived his right to appeal the revocation of the driver's license.

(4) If the Department ~~of Driver Services~~ has not received completed medical reports from the operator within 30 days, the operator's driver's license shall be revoked and the operator shall be deemed to have waived his right to appeal or otherwise contest the revocation.

(5) Upon receipt of medical reports satisfactorily completed by a physician designated by the operator, the Department shall ~~forward copies and said reports~~ review the recommendations made therein and make a determination if a decision can be made based upon the content thereof and the applicable provisions of this Chapter, or if the reports should be forwarded to the Chairman of the Driver's License Advisory Board; for the ~~The Chairman shall designate an appropriate member(s) of the Board to review each operator's medical reports~~ and to make recommendations to the Department regarding reinstatement or revocation of the driver's license. The Department or the Board may request that further information be supplied by the physicians who forwarded medical reports to the Department, or that the operator submit to an examination by a medical specialists designated by the Board within the operator's geographical area.

(6) The Department may, upon good cause shown, extend the time periods established above. The Department's decisions in this regard shall be final and not subject to review.

(7) After receipt of the recommendation of the Driver's License Advisory Board and any other pertinent information, the Department shall notify the driver, by mail, of the retention or reinstatement, retention or reinstatement with restrictions, or revocation of his driver's license. As the Department is authorized by statute to impose any restrictions which it may determine are appropriate to assure the safe operation of any motor vehicle by the operator, no appeal shall lie from the Department's decision to reinstate the operator's driver's license with restrictions. If the driver's license is revoked, the operator may appeal that revocation as provided hereinafter.

(8) The operator may, within 15 days of receipt of notice of revocation, request a hearing by a designated hearing officer of the Department. Such request must be made in writing and received by the Department within the 15-day period specified. If no written request for hearing is received within the 15-day time period, the driver shall be considered to have waived his right to a hearing and to appeal the revocation of his driver' license. The notice of revocation shall advise the driver of this requirement.

(9) A hearing shall be scheduled upon written request of the driver before the Office of State Administrative Hearings.

(10) The hearing and appeal procedures shall be as specified in Ga. Admin. Comp. Ch. 375-3-3-.04.

(11) An operator who timely requests a hearing in writing may continue to drive, except as otherwise specified herein, pending the issuance of a final agency decision pursuant to the provisions of Ga. Admin. Comp. Ch. 375-3-3-.04.

(12) If the Department receives evidence that an operator of a motor vehicle should not drive due to physical or mental incapacity and determines that the public health, safety, or welfare imperatively requires emergency action, the Department shall, upon expressly so finding, be authorized to issue an emergency order directing immediate revocation of the driver's license. The emergency order shall incorporate such a finding. Said emergency order shall be sent to the licensee by personal delivery, or by certified mail with return receipt requested. The order shall be accompanied by medical report forms and the instructions provided above, except that the operator shall not be instructed that he is authorized to continue to drive. The emergency order shall inform the licensee that the revocation of his license is effective upon receipt of the Department order. The order shall further inform the operator that, in the event that he desires to contest the revocation, he must submit, in writing, a request for hearing within 15 days of receipt of the emergency order. The Department shall designate a hearing officer to conduct the hearing, which shall be conducted pursuant to the procedures provided in Ga. Admin. Comp. Ch. 375-3-3-.04. A hearing requested by an operator whose driver's license has been revoked under the emergency provisions of this paragraph shall be scheduled within 15 working days of receipt of the request for hearing by the Department, unless the operator or his legal representative requests or consents to an extension of time. This hearing shall be a preliminary hearing, at which the Office of State Administrative Hearings shall determine whether the public health, safety, or welfare continues to imperatively require emergency action. If the administrative law judge upholds this determination, the revocation shall proceed as set forth above and the revocation of the operator's driver's license shall remain in effect. If the administrative law judge determines that the public health, safety, or welfare no longer imperatively requires emergency action, the revocation shall continue as provided in above, but the operator's driving privileges may be restored pending completion of those proceedings.

(13) Once a driver or applicant is found to be physically and/or mentally qualified, the Department may require a test to issue a driver's license. ~~The driver/applicant is allowed three examinations at thirty (30) day intervals. If successful, the revocation will be reinstated. If unsuccessful in the three attempts, the driver/applicant will not be eligible to reapply for reinstatement for one (1) year~~ such driver to complete the applicable knowledge and/or skills tests for issuance of a driver's license. Any driver who fails an applicable skills or knowledge test may make another attempt at such test in the time intervals established in Ga. Admin. Comp. Ch. 375-3-1-.12. Notwithstanding the foregoing, if a driver successfully completes the knowledge test(s), but does not take or fails the applicable skills test(s), the revocation shall be reinstated, and he or she may be issued an instructional permit in the applicable license class.

SYNOPSIS

STATEMENT OF PURPOSE AND MAIN FEATURES OF PROPOSED RULE

The purpose of this proposed amendment is to modify an existing regulation to clarify the procedure for reviewing a customer's medical status to determine if he or she remains safe to drive and reinstating a driver's license revoked due to the customer's medical condition.

DIFFERENCES BETWEEN EXISTING AND PROPOSED RULES

The words "and that such reports will be forwarded to the Driver's License Advisory Board for review and evaluation" were deleted from Paragraph (3)(b)(iii).

Paragraphs (3)(b)(iv) and (5) were re-written to modify the process by which the Department makes decisions about medical revocations.

The words "of Driver Services" were deleted from Paragraphs (3)(b)(v) and (4) as superfluous.

Paragraph (13) was amended to clarify the process by which a customer may reinstate a medical revocation. Specifically, he or she must complete the applicable knowledge and skills tests. The paragraph was further amended to decrease the time between attempts if a customer fails such a test, and language was added to allow him/her to obtain an instructional permit if only the knowledge test is completed successfully.