



## WSIB Myth - A Driving Restriction On a Functional Abilities Form (FAF) Only Valid if A Doctor Notifies the Ministry of Transportation – Medical Suspension

By: Gary Majesky, *WSIB Consultant & Executive Board Member*



In the mosh-pit of workers compensation a frequent controversy arises whether an injured worker has a driving limitation (restriction). The WSIB Functional Abilities Form or FAF asks health professionals whether there is a restriction in taking public transit or driving. When a doctor ticks (Ø) the box indicating a driving restriction, typically due to mobility or medication side effects, the howls start whether the doctor notified the Ministry of Transportation of a medical suspension. Usually the employer rep barks “did your doctor report your license suspension to MTO?”

Over the years I have dealt with many representatives, including WSIB decision makers who accept as gospel that a FAF driving restriction is only valid if a medical licence suspension was processed. With great respect that position is misinformed. Hopefully, the following information gives you a better insight into medical license suspensions and how this potentially impacts injured workers.

### Physicians' Duty to Report Patients

In Ontario the law requires that physicians report patients who, in the opinion of the physician, may be unfit to drive for medical reasons. The mandatory reporting requirement for physicians is found in Section 203 of the Highway Traffic Act. The requirement states:

- Every legally qualified medical practitioner shall report to the Registrar the name, address and clinical condition of every person sixteen years of age or over attending upon a medical practitioner for medical services, who, in the opinion of such medical practitioner is suffering from a condition that may make it dangerous for such person to operate a motor vehicle.
- No action shall be brought against a qualified medical practitioner for complying with this section.
- The report referred to in subsection (1) is privileged for the information of the Registrar only and shall not be open for public inspection, and such report is inadmissible in evidence for any purpose in any trial except to prove compliance with subsection (1). R.S.O. 1980, c. 198, s. 203.

Similar provisions are in place for optometrists to report visual conditions (s. 204), which have been in place since 1968.

### What Conditions to Report

The Canadian Medical Association also publishes the *“Physician's Guide to Driver Examination”* to assist physicians in determining which conditions may make it dangerous to drive safely. The guide is available from the Canadian Medical Association.

### How the Ministry Determines Licence Status

The Ministry considers the details of the individual's clinical condition reported by the attending physician, using guidelines established by the Canadian Medical Association, and advice from the Ministry's Medical Advisory Committee, whose members are experts in the fields of neurology, cardiology, psychiatry, endocrinology, ophthalmology, internal medicine, substance abuse, geriatric medicine and physiatry. The ministry relies on information provided on this form to help identify individuals who are at significant risk so that immediate action to suspend the licence of any individual reported to have a chronic or deteriorating condition that is likely to impair judgement or psychomotor skills or to be experiencing recurring or unexplained episodes of loss of consciousness.

If an individual is reported to have a clinical condition that is well controlled and the individual is under physician care, the ministry generally does not suspend the licence. Where stability may be questionable, the ministry may request follow-up medical information to confirm stability or request the individual undergo a driving examination or other appropriate assessments.

### Tribunal Case Law Regarding Driver License Suspension

In a noteworthy decision, Vice-chair Dan Revington, and former Tribunal Counsel for a number of years, addressed the issue of driver's licence suspension in *Decision No. 1672/18*:

[48] In his submissions the employer's representative has stressed that the worker's allegation about being unable to drive was doubtful because the worker's doctor had not suspended the worker's driver's license. I assume the employer's representative is referring to section 203(1) of the *Ontario Highway Traffic Act* (R.S.O. 1990 c. H.8). Section 203(1) requires “every legally qualified medical practitioner” to report to the Registrar of Motor Vehicles the “name, address and clinical condition of every person sixteen years of age or over attending upon the medical practitioner for medical reasons who, in the opinion of the medical practitioner, is suffering from a condition that may make it dangerous for the person to operate a motor vehicle.” Section 14 of *Ontario Regulation 340/94* and section 47 of the *Ontario Highway Traffic Act* authorize the suspension or cancellation of a driver's licence where a report under section 203 has been received.

[49] I do not agree that it was necessary for the worker's driver's licence to be suspended for there to be a finding she was



restricted from driving her standard transmission vehicle during her recovery from her workplace injury.

[50] Every year thousands of Form 8s are submitted to the Board by health professionals. Each Form 8 has a box that may be ticked to indicate if the injured worker has restrictions on his or her functional ability to operate a motor vehicle. While it is true that a report submitted pursuant to section 203 of the *Ontario Highway Traffic Act* would be evidence that supports a finding that the worker could not drive, in my view submitting such a report is not a prerequisite to finding the worker has restrictions that make her unable to drive to accept modified work. The fact Dr. McCrae did not make a report under section 203 of the *Ontario Highway Traffic Act* does not negate that his opinion provides medical support for the worker's inability to drive her vehicle during the period of time at issue.

Hopefully this article exposes the myth that a driving restriction isn't valid unless your Physician reports a medical licence suspension to the MTO. As you can see, that isn't the case, and feel free to distribute and rely on this information if you are dealing with a similar issue in your workplace.

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## O.P.C. Hockey Ice Time Tryouts

**Vaughan Iceplex**  
7551 Jane Street  
(North of Hwy 407, East of Jane Street)

Wednesday, March 13, 20 & 27 •  
April 3 at 5:30pm - 7:30pm

*No need to confirm. Just show up at the scheduled times.*

**(For further information contact  
Ray Tripp at (705) 817-5402 or  
Jodi Hill at (705) 790-1606)**

## Working at Heights & WHMIS Training

**Working at Heights certification is now required prior to being eligible for Dispatch. Please call Cindy in the Education department at (416) 510-5259, to book a seat in the next available daytime class. This training is **NOT** available to Apprentices or Low-Rise members or members who are currently working.**

**Working at Heights Training** will be offered to *out of work members* at the following times:

Toronto Training Centre – Mondays at 8:30am  
Mississauga Training Centre – Wednesdays at 8:30am  
Oshawa Training Centre – 1st and 3rd Thursdays at 8:30am  
Barrie Training Centre – 3rd Thursday at 8:30am

**Working at Heights Refresher Training** will be offered to *out of work members* at the following times:

Toronto Training Centre – Tuesdays at 11:00am  
Mississauga Training Centre – Thursdays at 11:00am  
Oshawa Training Centre – 2nd and 4th Wednesday at 11:00am  
Barrie Training Centre – 4th Thursday at 11:00am

**WHMIS Training** will be offered to *out of work members* at the following times:  
Toronto Training Centre – Tuesdays at 8:30am  
Mississauga Training Centre – Thursdays at 8:30am  
Oshawa Training Centre – 2nd and 4th Wednesday at 8:30am  
Barrie Training Centre – 4th Thursday at 8:30am

