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March 3, 2003

Mr. Raymond P. Martinez
Commissioner
NYS Department of Motor Vehicles
Swan Street Building, Empire State Plaza
Albany, NY 12207

Re: Report 2002-F-39

Dear Mr. Martinez:

Pursuant to the State Comptroller's authority as set forth in Article V, Section 1 of the State Constitution, and Article II, Section 8 of the State Finance Law, we have reviewed the actions taken by officials of the Department of Motor Vehicles (Department) as of December 11, 2002 to implement the recommendations contained in our audit report *Administration and Monitoring of Driving School Programs* (Report 2000-S-4) issued June 20, 2001. That audit examined whether the Department established an effective system to determine whether applicants for licenses to operate driving schools or provide instruction at such schools meet all licensing requirements. We also examined whether the Department adequately monitors the driving schools that provide the Pre-licensing courses and the Point Insurance Reduction Program providers to determine whether they continue to comply with all program requirements.

Background

The Department administers driving school programs that provide a variety of driver training services to the public through privately-owned driving schools located throughout the State. The New York State Vehicle and Traffic Law established requirements for the Department's oversight of the driving schools and the five-hour pre-licensing program. The law addresses registration procedures, required records, school vehicles and training facilities, qualifications and certification of instructors, and conditions for suspension, revocation and refusal to renew licenses. The services offered by the driving schools may include a defensive driver training program called the Point Insurance Reduction Program (PIRP), a five-hour motor vehicle pre-licensing class for new drivers (pre-licensing program), and on-road driving lessons for commercial and passenger vehicles. New drivers are required to successfully complete the five-hour class to qualify for testing to receive a driver license.

The Department provides the certificate forms to the driving schools for issuance. When participants successfully complete the five-hour course, they receive a certificate of completion from the driving school. The certificate of completion is given to the examiner at the road test for a driver license. To receive additional certificates, driving schools submit rosters of persons completing the course to the Department. The Department's Driving School Unit administers the prelicensing program. Under PIRP, the Department also offers motor vehicle accident prevention courses to drivers with the goal of improving highway safety in the State. Drivers who successfully complete a qualifying six-hour course are eligible for a reduction of up to four points on their license and a reduction in their automobile insurance premiums. Part 138, Title 15, of the New York Code, Rules and Regulations, which govern Department programs and activities, give the Department responsibility with cooperation from sponsoring organizations and delivery agencies for monitoring the six-hour PIRP courses.

Summary Conclusion

Our prior audit identified weaknesses in the Department's licensing and monitoring of driving school programs. As a result of these weaknesses, the Department was less likely to identify applicants who should not be licensed because of repeated driving infractions or other inappropriate activities. We reported that the Department was less likely to identify instructors who are not qualified, instructional vehicles that lack the required safety equipment, and driving schools that issue certificates of completion to drivers who did not complete the required instruction or did not pass a qualifying test. In addition, we noted that instructor licenses had been issued to individuals with repeated driving infractions, and determined that, at some driving schools, blank certificates of course completion had been pre-signed and qualifying tests had been incorrectly graded. If the services provided by the driving schools are to be effective and as safe as intended, a number of improvements were needed in the Department's licensing and monitoring practices

Since the prior audit, the Department has made significant progress for establishing an effective system of verifying whether applicants for licenses to operate driving schools or provide instruction at such schools meet all licensing requirements. The Department has also enhanced its ability to monitor whether the driving schools providing the pre-licensing courses and PIRP providers comply with all program requirements. However, the Department can do more to strengthen its ability to verify independently whether there is a disqualifying criminal history when reviewing initial or renewal applications for driving school owners and instructors, and take appropriate measures to identify driving schools that may be operating illicitly.

Summary of Status of Prior Audit Recommendations

Of the 12 recommendations contained in the prior audit report, 4 were implemented, 5 were partially implemented and 3 recommendations have not been implemented.

Recommendation 1

Implement procedures to require documentation of driving school licensure and monitoring to be retained.

Status - Partially Implemented

Agency Action - Department officials provided documents indicating they have disseminated a formal set of Driving School Procedures to the Driving Program Regulation staff responsible for processing original driving school applications. They provided us with the driving school application that is currently used with all necessary supporting attachments. Officials indicated that all materials supporting the initial license application are retained indefinitely. After six years other material pertaining to the driving school may be purged from the file. We reviewed 11 driving school application files processed during the period June 28, 2002 through October 3, 2002 for four types of documentation: original application; initial site visit by examiner; log of current vehicles; and proof of current vehicle registration and vehicle auto insurance. We noted that 6 percent of the sampled documents were missing from the files reviewed. This is an improvement from our audit when 43 percent of these four documents were missing from the files. Officials indicated they are developing a Driver Regulation Enforcement And Management System (DREAMS) that will address record storage retention requirements for driving schools and other businesses that the Department regulates. DREAMS will be implemented in four phases and will not be fully operational until sometime in 2003. Ultimately, all driving school records will exist as electronic records in DREAMS and as electronic images in Kofax, which will replace the current system of retaining paper records.

Recommendation 2

Develop computerized methods such as automatic notification or computer matches to monitor driving school insurance policies for workers' compensation.

Status - Partially Implemented

Agency Action - The Department indicated that annually it sends the Workers' Compensation Board (Board) a list of all driving schools and their instructors. The Board compares its records with the Department's list to determine if any schools have not provided the Department with proper proof of workers' compensation coverage. The Board sends a memo to the Department identifying schools that may not be in compliance with the workers' compensation law, and requests that it either suspend the license of an existing school or not approve the driving school license for a new applicant. Department officials indicate when the DREAMS database is complete the Board will receive the information necessary to determine compliance with the Workers' Compensation Law. The new procedure partially satisfies the spirit of the recommendation. However, as currently designed, DREAMS will not contain a table that indicates whether driving schools have a current workers' compensation policy.

Recommendation 3

Develop and implement written, standardized methodologies to provide guidance for consistent decisions on initial licensing and renewal based on owners and instructors' driving histories. Also,

evaluate the need to establish a threshold for the number of suspensions or revocations at which time a license will no longer be granted.

Status - Not Implemented

Agency Action - Department officials replied "A standardized methodology for consistent decisions when reviewing driving history of driving school instructors (original and renewal applications) is in development for system implementation so that it can be performed automatically by the new DREAMS database automated processing system. This methodology will be based upon the existing 'points' system that assigns values to all convictions for moving violations according to their seriousness." Our discussions with the project managers responsible for developing DREAMS indicated that no written criteria was provided by Department officials to be included in its database that will readily distinguish between acceptable and unacceptable driving histories for driving school owners and instructors. In addition, we reviewed some driving school files and noted that several of the driving histories were not in the case files. Officials explained the Department only files driving histories of owners and instructors who have driving infractions during the most recent licensing period. Therefore, some of the files may not contain the driving history for an owner or instructor because the individual did not have a driving infraction during the licensing period.

Recommendation 4

Implement a procedure to add new owners and instructors to LENS and to remove those who do not renew their licenses.

Status - Implemented

Agency Action - Department officials provided their *Procedures for Adding and Removing Driving School Instructors to LENS* (License Event Notification Service). Officials provided two printouts of the LENS database: one printout indicated all driving school instructors enrolled in LENS as of September 4, 2002; the other printout identified all current driving school instructors as of September 5, 2002. We sampled 16 driver school case files for the period June 28, 2002 through October 3, 2002 and noted that all licensed instructors and owners were being added to the LENS.

Recommendation 5

Seek the appropriate authority and work with DCJS to develop a process that will allow the Department to check criminal backgrounds of applicants for owner and instructor licenses. Include criteria for license approval and denial to promote consistent decisions.

Status - Not Implemented

Agency Action - Department officials indicated it would require legislation to perform criminal history background checks on Driving School owners or instructors.

Recommendation 6

Develop and implement a policy for ongoing monitoring of driving schools including the frequency and content of required site visits.

Status - Partially Implemented

Agency Action - Department officials indicated that the August 2000 reorganization of the Office of Driver Program Regulation (DPR), is still ongoing. In December 2001, DPR was physically separated and staff moved into the Bureau of Customer Service, Program Development, and Program Oversight. Program Oversight is responsible for monitoring all programs regulated by DPR. The monitoring of driving schools is a joint effort between DPR and the Department's Field Operations District Offices. Motor Vehicle License Examiners (MVLEs) working in Field Operations District Office Testing & Investigation units throughout the State actually perform the site inspection duties. The current expectations concerning the monitoring of driving schools are: Every new driving school application requires an on-site inspection and approval by MVLE staff prior to licensing; any request for change of location or branch office requires an on-site inspection and approval by MVLE staff; complaints received by District Offices or DPR concerning a driving school will result in a request for an on-site inspection and record review to be done by MVLE staff; violations discovered through a record review, or by other means (e.g., Field Investigation, MVLE observations/interaction at the road test line) will result in a warning or an administrative hearing and; violations of a criminal nature will be referred to the Department's Division of Field Investigation. They further indicated that there is no mandate in statute or regulation for regular monitoring of driving schools. The Department provided a copy of the Investigation Report (form MV-147-A) that must be completed during a driving school site visit. The District Office retains a copy of the report and the original is filed in the DPR driving school file in Albany. Although the Department has reorganized the Office of Driver Program Regulation, officials did not provide us with any new policy or procedure that they have developed and implemented to enhance the ongoing monitoring of driving schools. Officials indicated that the system changes (DREAMS), process improvements and allocation of staffing resources demonstrates that the Department plans to enhance its monitoring of driving schools.

Recommendation 7

Determine whether sufficient resources have been allocated to monitoring driving schools based on the workload demands. Develop a tracking system of violations and other problems noted at the driving school and use this information to determine the extent of monitoring devoted to each driving school.

Status - Partially Implemented

Agency Action - The Department provided August 2001 documents indicating there were discussions between the Director of Driver Program Regulations and Field Operations officials regarding the possibility of DPR assuming responsibility for the monitoring of driving schools (and 19-A bus carriers) from the MVLEs. On October 25, 2001, a proposed

plan was introduced to assign some MVLEs to Driver Program Regulation. Shortly thereafter, DPR met the Director of Field Operations, and it was agreed that the existing organizational structure would remain unchanged. Field Operations will continue to monitor driving schools. Independent of the above proposal, DPR attempted to obtain two additional MVLE positions for Field Operations to augment their monitoring efforts in districts, where needed. These positions never materialized. Over the past year, the Statewide MVLE ranks are down by 12 positions with no replacements approved. Officials indicated the Department has not been authorized to fill the vacancies created by a hiring freeze.

Recommendation 8

Improve the effectiveness of the hearing and enforcement process. At a minimum, provide training to Examiners in areas such as evidence gathering, sufficiency of evidence, and the preparation of hearing cases. Provide assistance of legal staff in hearing case preparation and presentation of cases at the hearings. Review current enforcement tools to determine if they are a deterrent against noncompliance.

Status - Partially Implemented

Agency Action - Officials provided documents indicating that an Associate Attorney item was classified by the Department of Civil Service and approved by the Division of the Budget on June 1, 2001. The position is being used in the Office of Special Counsel as a working supervisor. In FY 2001-2002, the Office of Special Counsel opened 57 cases. Of these, 41 were prosecutions. Approximately, \$127,500 in Civil Penalties was generated in the cases prosecuted by the Office of Special Counsel. The Associate Attorney handled 19 of the cases. In the first five months of FY 2002-2003, the Office of Special Counsel opened 28 cases. Of these, 19 were prosecutions, and 16 cases remain open pending a hearing. In fiscal year 2001-2002, the Office of Special Counsel provided individualized assistance in 15 cases. This assistance included help with the drafting of charges, case review and recommendations, legal research, attendance and participation at hearings being prosecuted by non-attorneys and one-on-one training. While the Department has made some improvements, our review shows it had not scheduled the training for its senior MVLEs in evidence gathering and in other matters pertaining to prosecuting driving schools that are operating illicitly. The training of the MVLEs will be delayed until the training manual is completed.

Recommendation 9

Review district office security and record keeping over certificates and take action to correct any deficiencies noted.

Status - Implemented

Agency Action - Officials indicated that every District Office requires the following documentation and keeps the following records to control Pre-licensing Certificates. Before the District Office releases a new book of Pre-licensing Certificates, the driving school must submit pre-licensing class rosters listing student names and the MV-278 numbers it has already issued.

This accounts for the MV-278 certificates previously issued to the driving school before new MV-278 books are given out. A driving school representative authorized to obtain Pre-Licensing Certificates must sign the form. The District Office maintains a sample list of all authorized signatures for each driving school located in the district. The District Office keeps an inventory log of all the MV-278 certificate books issued. On December 11, 2002, at the Albany District Office, we were provided with DMV's procedures for monitoring the issuance of MV-278 books. The only MV-278 certificate book disseminated since the effective date of the new policy was issued in compliance with the Department's new procedures.

Recommendation 10

Develop and implement specific procedures to help Examiners to identify and detect unlicensed schools and to refer them to appropriate authorities for enforcement actions. For example, implement a procedure to follow up on all complaints from licensed schools about unlicensed schools.

Status - Not Implemented

Agency Action - Officials indicated that the District Office does not use phone listings in an attempt to identify facilities that may be operating without a license. Officials claim advertising is not evidence of an illegally operating driving school. When a complaint is received, DPR sends a letter to the person and location described in the complaint advising that if they are conducting the business of a driving school without being properly licensed that they are in violation of the Vehicle & Traffic Law and Commissioner's Regulations. The District Office may be asked to do an on-site visit, and/or DPR may request an investigation by the Department's Division of Field Investigation if criminal activities are suspected. However, officials further indicated that the DREAMS database will make it very easy to verify unlicensed driving schools. It will make it easier to create a record for unlicensed driving schools for investigation. During our briefing of the DREAMS database, officials did not disclose how it would assist examiners in detecting unlicensed driving schools.

Recommendation 11

Reassess the resources allocated to PIRP and determine remedies for developing a comprehensive monitoring system. Work with sponsoring organizations to establish a monitoring system based on a shared responsibility and identify the monitoring procedures to be performed by the Department and the sponsoring organizations.

Status - Implemented

Agency Action - Officials provided documents indicating that the Department has contracts with 14 colleges across the State to provide students to monitor PIRP delivery agencies and instructors in the classroom. The Department has 3 regional managers (Albany, Rochester and Long Island) who recruit colleges and students, conduct PIRP monitoring training, coordinate the monitoring by the college students, review the monitoring reports, and also

occasionally monitor PIRP classes themselves. Officials indicated that since the revised PIRP regulations were promulgated in May 2000, they have audited two sponsors, the National Safety Council located in Syracuse and the National Traffic Safety Institute in Staten Island. From these two audits they have developed a guide for the DPR Regional Managers to use for auditing the remaining PIRP sponsors. This information will be entered in the DREAMS database upon the completion of the PIRP Phase. They also provided the PIRP tables that will be included in the DREAMS.

Recommendation 12

Develop procedures and systems to capture important program information to enable effective monitoring of program operations.

Status - Implemented

Agency Action - Officials responded that DPR is currently working with the Department's Information Technology group to design and develop PIRP functionality in the DREAMS database. This phase of the new system was scheduled for December 2002. As an interim measure, DPR has created an ACCESS database (file name "PIRP") that is used to record all the PIRP monitoring visits that have been done to date. This file identifies the PIRP sponsor, delivery agency, instructor, date of class monitored, violations noted, and action taken, if any.

The major contributors to this report were Abraham C. Markowitz and Claude Volcy.

We would appreciate your response to this report within 30 days, indicating any additional actions planned to address the recommendations discussed in this report. We also thank the management and staff of the Department of Motor Vehicles for the courtesies and cooperation they extended to our auditors during this review.

Very truly yours,

Carmen Maldonado
Audit Director

cc: Deirdre A. Taylor
Edward Wade