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MEDICAL & PHYSICAL EVALUATION GUIDELINES FOR MERCHANT MARINER CREDENTIALS

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BIG CHANGES AHEAD FOR MARINERS AS MEDICAL WAIVERS BECOME A BIG ISSUE

What in the Hell is a NVIC?

NVIC (pronounced “Navick”) is an acronym for Navigation and Vessel Inspection Circular. It is a Coast Guard “Guidance Document” that, although it is neither a law nor a regulation, has the power to affect or even end your career at sea. There are dozens of these “guidance documents” in print that affect all sorts of different audiences. If you are a licensed or documented mariner, this change will affect **YOU!!!**

The Coast Guard is about to revise and update their existing NVIC 2-98 titled Physical Evaluation Guidelines for Merchant Mariner’s Documents and Licenses in a very significant way.

Why the Change?

The Coast Guard has a long history of being “reactive” rather than “pro-active.” It takes a major accident or major scandal to lift them off their lazy butts and take the initiative to do almost anything. Yet, like a huge elephant, when it raises its foot to move, it inevitably crushes something, whether it intends to or not. Since many of our mariners are

treated little better than an insignificant piece of defecation on the floor and can only watch the elephant’s huge foot in motion, we need to seek cover if any is available – possibly considering a second career as many already opted to do. After all, most of our lower-level mariners are “jacks of all trades,” perhaps not because they want to be, but because of the very nature of the industry.

On October 15, 2003 the Staten Island Ferry ANDREW J. BARBERI⁽¹⁾ carrying 1,500 passengers and 15 crewmembers struck the corner of a maintenance pier at full speed killing 10 passengers and injuring 70 more. The relief Captain passed out at the wheel as a result of undisclosed medical problems that him and his Doctor to jail and led the NTSB to “recommend” a review of the entire medical waiver system used by the Coast Guard in determining whether merchant mariners are fit for duty. [⁽¹⁾Refer to NTSB Marine Accident Report NTSB/MAR-05/01. GCMA file #M-432]

Following the accident, the NTSB made the following recommendations to the U.S. Coast Guard:

- Revise regulation 46 CFR §10.709 to require that the results of all physical examinations be reported to the Coast Guard, and provide **guidance** to mariners, employers, and mariner medical examiners on specific actions required to comply with these regulations. [NTSB Recommendation #M-05-04.]
- In formal consultation with experts in the field of occupational medicine, review your medical oversight process and take actions to address, at a minimum, the lack of tracking of performed examinations: the potential for inconsistent interpretations and evaluations between medical practitioners, deficiencies in the system of storing medical data; the absence of requirements for mariners or others to report changes in medical condition between examinations; and the limited ability of the Coast Guard to review medical evaluations made by personal health care providers. [NTSB Recommendation #M-05-05.]

These recommendations struck at the heart of the Coast Guard’s half-ass licensing system and exposed one of the many weaknesses of the system that existed for years.

Over the years, the Coast Guard always placed its licensing system and merchant mariner documentation (MMD) system on the “back burner” and ignored its faults until accidents like the AMTRAK wreck at Bayou Canot or the ANDREW J. BARBERI allusion spotlighted it in the national press. In this case, mariners and their supervisors went to jail and the City of New York faces billions of dollars in lawsuits. We believe it is about time that the Coast Guard woke up and addressed its problems in dealing with our mariners.

With this said, we lament that there may be a painful awakening ahead for many merchant mariners who counted on a career in the marine industry to carry them through until retirement only to watch it fall apart before their eyes.

The existing medical standards only call for mariners to be physically fit. To describe what this means, the Coast Guard uses an internal document called a NVIC. The last NVIC dealing with physical examinations and waivers was NVIC 2-98. This is about to be replaced by the **Draft NVIC** that we present in this report. This Draft NVIC was under discussion in the Merchant Marine Personnel Advisory Committee (MERPAC) for months and was the high point of the MERPAC meeting on April 4-5, 2006 and discussed again on September 13-14, 2006.

Will the Changes Affect Me?

If you have any medical problems or are advancing in age (and who isn't) there is a good chance that these new guidelines will affect you. There are 202 "**potentially disqualifying**" conditions that may now require a **medical waiver**.

Those who require medical waivers today know how screwed up the existing system is. According Dr. French, the Coast Guard doctor in charge of the existing program, most of these screw-ups apparently do not occur at the National Maritime Center. By default, this means they must occur at the Regional Examination Center (REC) level because they get sidetracked and lost what is called euphemistically called the "**information loop**."

The "information loop" occurs when the REC demands medical information that mariners must squeeze out of their doctors. For many reasons, one of which being that private physicians may not be familiar with the Coast Guard's brand of bureaucratic red tape, the information never reaches Washington for medical review.

That is supposed to change. In the future, Coast Guard doctors and evaluators will talk directly with your doctor about your medical condition(s) and leave you out of the loop. In the future, the REC will be out of the picture for the most part and the National Maritime Center (NMC) will handle medical waivers with its physicians and medical evaluation staff. You can only hope the phones at the NMC work better than the pitiful phone systems at many RECs.

The medical review staff at the NMC will increase from the current one and one-half people to seven as the NMC relocates from Arlington, Virginia to Martinsburg, West Virginia, over the next year and a half. In addition, this medical staff eventually plans to review the medical records of every mariner not just those who need a medical waiver. "Big Brother" will be watching you!

These changes will affect every mariner! They certainly affected MERPAC as it considered the dilemma in light of the current crew shortages.

What Are These Changes?

Around the end of April or early May 2006, the Coast Guard was supposed to publish the Draft NVIC in the Federal Register. Forget that – it was published on September 28, 2006. Of course, 99% of our mariners have never seen the Federal Register. Well, for those of you with a computer it is available at <http://access.gpo.gov> in the September 28th Federal Register at page 56998. As we promised in GCMA Newsletter #39, we are reprinting the document. Of course, most lower-level mariners do not have the technical expertise to read or understand most of the medical terminology it contains – except, perhaps, the disease(s) that may afflict you.

When you read the NVIC, take the time to try to wade through its introductory pages. Then select the disease(s) or condition(s) you are afflicted with and see whether they will "disqualify" you from merchant marine service – now or possibly in the future as you age and become more decrepit. Many conditions may not disqualify you if they are under control – and if the Coast Guard has your most recent medical records and will consider granting you a waiver. The Coast Guard will want to see your medical records and may even require you to undergo certain medical tests – at your expense, of course!

There will be a 60-day "Comment Period" ending on November 27, 2006 where you may write to the Coast Guard "docket" and provide your comments. However, this NVIC is **NOT** a rulemaking, it only seeks your comments.

Based on our experience attending the MERPAC meeting, the people who prepared this NVIC are medical professionals. If you are not at that level, your comment or question may not go anywhere.

If you have health problems or a medical condition, you need to read this NVIC carefully and take it seriously.

What The Coast Guard Told Us....

In the April MERPAC meeting, the Coast Guard told us:

- By the end of the Summer they will have an effective NVIC in place. (We didn't believe them).
- It will be much more "effective" than existing their NVIC 2-98 that was described as "useless."
- The "meat" of the NVIC can be found in its "enclosures". Enclosure 3 will be the list of 202 "potentially" disqualifying conditions. Evaluation data (e.g., a record of medical tests) will be required for each disability.
- The NVIC doesn't really change anything...it just puts current practices in writing. (We believed that the same as we believed its publication date).
- However, it will be more objective and less subjective than existing medical reviews.
- It will eliminate the "information loop" that has screwed up the medical evaluation process in the past and continues to screw it up today. That's a plus!
- Today, 5% or all medical waiver requests are denied. The Coast Guard doesn't expect this percentage to change in the future. GCMA won't predict the future. However, the mood at MERPAC was not optimistic.
- Today, the normal processing time for a medical waiver once it reaches the (understaffed) National Maritime Center is currently 12 days – if an when your request for a medical waiver ever reaches them. (Apparently, that was a major problem caused by the RECs.)
- The Medical Review team at the NMC will grow from 2 to 7 people. Its reorganization will be complete by 2007.
- Part of the reorganization process will be to revise the existing Physical Examination forms. Your doctor will have to become accustomed to new paperwork that never seems to stop "improving."

GCMA COMMENTS ON THE COAST GUARD'S NAVIGATION & VESSEL INSPECTION CIRCULAR

[Editorial Note: It is rare for the Coast Guard to request comments on a "guidance" document such as a Navigation and Vessel Inspection Circular. The Coast Guard drove this NVIC through MERPAC that did not appear to be too enthralled with it. There are already 40 comments on the Dockets website at <http://dms.dot.gov> (search for 25080) that we encourage our readers to review.]

November 25, 2006

U.S. Department of Transportation
Docket Management Facility
400 Seventh Street, SW
Washington, DC 20590-0001

Dear Sir or Madam,

The Gulf Coast Mariners Association represents those “lower-level” mariners who serve on commercial vessels of less than 1,600 gross register tons. This letter responds to the draft NVIC on Medical and Physical Evaluation Guidelines for Merchant Mariner Credentials in this docket as follows:

The issue behind this NVIC is the Coast Guard’s inappropriate response to the October 2003 accident involving the Staten Island Ferry ANDREW J. BARBERI. The NTSB found that two persons with necessary training, skills, and credentials should have been in the pilothouse of the ferry at the time of the accident. These matters were addressed appropriately at trial. While the NTSB also addressed medical matters, we believe the draft Coast Guard NVIC is an over-reaction that unnecessarily and arbitrarily threatens the careers of many of our lower-level mariners.

With this NVIC, the Coast Guard has introduced a document that represents a “military mindset” in dealing with important health issues that have the potential to end the career of many civilian merchant mariners by age 50. This means that for many mariners there will be no viable career path in the maritime industry that will allow them to continue to work in this industry until they reach retirement age – currently age 65. This may not be evident to those just entering the industry at a relatively young age. However, it will have an immediate effect on many older trained and experienced mariners already in the marine industry. One of the most serious problems facing the boat owners who employ our lower-level mariners is the impending retirement of a large number of skilled and experienced mariners. The introduction of this NVIC and its potential for expanding the “red tape” and bureaucratic harassment already prevalent in the licensing system could not possibly have come at a worse time for our mariners and the industry as a whole.

We hate to disillusion the Coast Guard officials in Washington who are so completely out of touch with our working mariners already, but most mariners remain in the industry work well beyond age 40 to 50. While this proposal may be sound for military health administrators, it is controversial and creates far more problems than it solves for our civilian merchant mariners.

It appears that the Coast Guard has a distorted view that **their duty** is to protect our waters from licensed American mariners who may become more hearing impaired or unable to pass a stress test as they advance in age. Coast Guard administrators seem to recognize no duty to serve the trained and experienced mariner who is on an advanced issue of his license. It appears through this proposed NVIC that the Coast Guard wants to eliminate older personnel from the maritime work force as if they were part of a military organization with military type duties. In doing so, it appears that Coast Guard officers plan to turn the Merchant Marine into the only type organization they are familiar with – a military organization. In such an organization, everyone should be under 40 so they can always put out unlimited exertion for whatever purpose they are engaged. We respectfully disagree.

Most physical requirements for Coast Guard credentials have been in place for many years and most mariners

understand them. However, through this arbitrary system of adding health and physical requirements whenever they feel like it in “guidance” documents like this NVIC, the Coast Guard will impose a significant change upon the maritime industry in general and significant expenses upon our mariners in particular without any form of due process or direction from the Congress. These abuses of their authority are all rationalized, and in the Coast Guard’s view, perfectly legal. We respectfully disagree.

It appears that the Coast Guard is making this up as they go along. Apparently, the Coast Guard believes it can change the requirements for a license arbitrarily at any time that they so choose. According to this rationale, making the licensee sign a Conditional Medical Waiver (as happened recently to one of our mariners) means that the Coast Guard can institute Suspension and Revocation Proceedings if the mariner does not fully comply with the terms and conditions of any waiver he may be granted. We object to this type of threat.

A great deal of this NVIC appears to be poorly concealed Age Discrimination although we are certain that the Coast Guard has a persuasive rationalization indicating it is not. Many of our mariners have called our office and expressed this belief.

We profoundly regret that the Coast Guard also seems to believe that their superintendence of the Merchant Marine includes no duty to protect the health of our mariners, especially older mariners. However, the Gulf Coast Mariners Association takes a contrary position. We hereby state that **these are the duties we believe the Coast Guard has to protect the health and welfare of our lower-level mariners**. We believe the Coast Guard must concentrate on these preventive measures rather than arbitrarily endanger the careers of our mariners.

- **A duty** to ease the unreasonable work-hour burden placed on our mariners. The Coast Guard permits 15-hour workdays for unlicensed crewmembers.⁽¹⁾
- **A duty** to address the work-hour abuse faced by licensed officers under the existing two-watch system as well as many working on 24-hour tugboats on a “one-watch” system.⁽²⁾
- **A duty** to support Public Health policy by requiring boat owners to institute no-smoking policies in public and sleeping areas of the boat to protect mariners against the hazards of second-hand smoke as discussed in the 2006 Surgeon General’s report on smoking. Since the Coast Guard can do it on their own cutters and bases, they must seek comparable authority from Congress to do so on commercial vessels to protect the health of our mariners who serve on these vessels.⁽³⁾
- **A duty** to encourage boat owners to take positive and, verifiable steps to reduce the workload on older mariners instead of trying to “run-off” older mariners.⁽⁴⁾
- **A duty** to require audio surveys on all commercial vessels as a first step to protect our mariners’ hearing from excessive noise.⁽⁵⁾
- **A duty** to require a survey on all vessels over 25 years old to determine the presence of asbestos and determine the threat it poses to our mariners.⁽⁶⁾
- **A duty** to require a standard entry-level physical exams of all mariners to determine from the outset whether they are suitable for service in the merchant marine. This should include not only those sitting for a license or a

merchant mariners document (MMD) to work on a vessel of more than 100 GRT but also those who work on smaller commercial vessels. There are thousands of mariners working on vessels of less than 100 tons that the Coast Guard never even counted as merchant mariners and does not have any information on.⁽⁷⁾

- **A duty** to recognize that the towing industry and the offshore oil industry are dangerous industries for mariners.⁽¹²⁾ Since there is no longer medical coverage for mariners at Public Health Service facilities, the Coast Guard should require employers to provide full medical, disability, and death benefit coverage for merchant mariners that would include coverage for any and all medical tests the Coast Guard may order during their credential renewal process.
- **A duty** to recommend to Congress authorization for disability coverage (SSI) for merchant mariners who are disabled on the job or whose health problems develop after an initial physical examination does not allow them to return to a job afloat.
- **A duty** to eliminate the ineffective CG-2692 as an instrument for reporting personal injuries and to replace it with a reporting form similar to the OSHA-300 series of reports where employers must keep track of their employees' injuries.⁽⁸⁾
- **A duty** to assign a higher priority to creating new regulations to provide for safe potable water to commercial vessels (as mandated by Congress in 2004) as well as providing sanitation training for all those who carry out food preparation for others on vessels in 24-hour operation to prevent the spread of food borne illnesses.⁽⁹⁾
- **A duty** to recommend Crew Endurance Management (CEMS) training (only) for all mariners and disallow CEMS as a method that allows companies to under man their vessels.⁽¹⁰⁾
- **A duty** to require training in CPR, First Aid, and stress avoidance⁽¹¹⁾ for all mariners on every commercial vessel. CPR and First Aid training is necessary because some vessels are manned by as few as two mariners.

The Gulf Coast Mariners Association prepared a number of reports that further discuss our comments. Rather than burden this Docket, these reports are available on our internet website at the address shown in our letterhead. We urge the Coast Guard to consult these reports before taking further action on this NVIC.

Very truly yours,
s/Richard A. Block, Sec'y, GCMA

Footnotes:

⁽¹⁾ *GCMA Report #R-412. Towboat Engineer's Death Points to Need for Changes in the Law.*

GCMA Report #R-370-A. Report to Congress: Violation of the 12-Hour Rules: Webbers Falls Accident Revisited.

GCMA Report #R-370-B. Violation of the 12-Hour Rules: The Tug Chinook Strikes and Damages the Lake Washington Bridge.

GCMA Report #R-370C, Rev.2. 12 Hour Rule Violations: The Winkler Case.

GCMA Report #R-370-E. Crew Endurance: Work-Hour Laws and Regulations Need Review.

GCMA Report #R-370-G. Crew Endurance: The Call Watch Cover-up.

⁽²⁾ *GCMA Report #R-370-D. Work-Hour Abuse, Whistleblower Protection and "Deadhead Transportation.*

⁽³⁾ *GCMA Report #R-341. Rev.3. Smoking and Merchant Mariner Health & Welfare Issues: A Petition to Congress.*

GCMA Report #R-341-A. The Health Consequences of Involuntary Exposure to Tobacco Smoke. Executive Summary of 2006 Surgeon General's Report.

⁽⁴⁾ *GCMA Report #R-370. 12 Hour Rule Violation: The Verret Case. (12 pgs)*

⁽⁵⁾ *GCMA Report #R-349. Jan. 20, 2003. Protecting Mariners' Hearing.*

⁽⁶⁾ *We recommend that the Coast Guard enforce the guidance contained in NVIC 6-87, Recommended Procedures for Control of Asbestos and Other Respiratory Hazards on Board Merchant Vessels, Outer Continental Shelf Facilities, and Deepwater Ports to the same extent as they enforce COMDTNOTE 6260 on their own vessels. Failure to do so fails to provide equal protection to our mariners who work on vessels over 25 years old. GCMA has already submitted formal complaints to OSHA and the Coast Guard in re: *Blackman v Global Industries*. File GCM-102.*

⁽⁷⁾ *GCMA Report # R-428. Rev.1. Report to Congress: The Forgotten Mariners. Maritime Education & Training for Entry-Level Deck & Engine Personnel. Pages 1-4 cite the fact that the Coast Guard failed to count a significant number of merchant mariners serving on vessels under 100 gross register tons. Many of these vessels are as much as 185 feet in length.*

⁽⁸⁾ *GCMA Report #R-292. Rev.1. Enforcement of Existing Accident and Injury Reporting Requirements.*

⁽⁹⁾ *GCMA Report #R-395. Rev.2. Safe Potable Water and Food Service for Commercial Vessels of Less than 1,600 Gross Register Tons: An Appeal to Congress.*

⁽¹⁰⁾ *GCMA Report #R-370-F. Crew Endurance Management Systems.*

⁽¹¹⁾ *GCMA Report # R-403. Stress and the Licensed Mariner.*

⁽¹²⁾ *GCMA Report #R-351. How Safe Is The Towing Industry?*

OTHER SEAMEN HAVE SIMILAR OPINIONS

[Source: *Physical Standards for Mariners*, by Gunnar Lundeborg, President, Sailors Union of the Pacific, in *West Coast Sailors*, Oct. 20, 2006. Emphasis by underlining is ours.]

On September 28, the Coast Guard published in the Federal Register a set of new medical evaluation standards for merchant mariners. The proposed rules, which will not become final until after a public comment period, grew out of the investigation into 2003 Staten Island ferry disaster in New York by the National Transportation Safety Board.

The essential point of the proposed guidance is that a mariner must be physically capable of performing his or her duties not only on a routine basis but also during an emergency. Connected with that point is the public safety risks associated with the "sudden incapacitation" that precipitated the ferry disaster. Accordingly, the guidance lists dozens of disqualifying conditions, medications, dietary supplements, that might lead to sudden incapacitation and therefore denial of a Merchant Mariners Credential. It is

very specific and very restrictive. For example, a mariner prescribed any anti-depressant medication must pursue a waiver, even if prescribed as an aid to smoking cessation. A mariner prescribed antihistamines will require a waiver if the drug is used within 24 hours of working under the authority of the credential.

The Coast Guard claims that the new rules are not new at all, but only the written expression of current practices in the physical and medical evaluation process. The Coast Guard further claims that the Navigation Inspection & Vessel Circular (NVIC) is necessary not only to update the existing medical regulations (the NVIC will replace NVIC 2-98) but also to serve the interests of transparency and consistency. They speculate that service to mariners will improve, in terms of reducing the time to process applications, because the guidance will "eliminate the guesswork that mariners may currently encounter as to what specific physical and medical information needs to be submitted to process their application."

The Sailors Union of the Pacific has repeatedly objected to all these claims. At various industry forums and meetings, where the Coast Guard has unveiled draft versions of the document, the Union has stressed that a major shift in the physical evaluation process could put new strains on the nation's merchant manpower pool. The Union has characterized the shift as a move from a prescriptive set of rules to a preemptive set of rules. Where in the past mariners would provide a medical snapshot of their physical condition to enable the Coast Guard to determine "good physical condition" at the time of application, now mariners must continuously update their medical records to prove at any given time that they are physically fit to perform both their routine and emergency duties and have a low risk of sudden incapacitation.

There is a waiver and appeal process for mariners that have a potentially disqualifying condition or medication. But all waivers will be processed by the National Maritime Center's medical staff, which at the present time consists of two doctors. Moreover, some waivers will be granted for periods of time shorter than the usual five year life of a credential, depending on the condition or medication.

The NVIC is available on the internet -at the site containing the docket for public comment. That address is <http://dms.dot.gov>. A full analysis of the draft guidance indicates that the Coast Guard has retreated from some earlier more restrictive positions. The Sailors' Union will stay on the offensive and continue to fight against a regulatory environment that favors companies over mariners by restricting our right to go to sea for a living.