

UNITED STATES DEPARTMENT OF TRANSPORTATION  
FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION

JOHN K. KAMAU  
Massachusetts CDL

)  
) Order No.: MA-2017-5001-IMH  
)  
) Service Date: 12/20/16  
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) Service Time: 2:59 pm  
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**IMMINENT HAZARD**  
**OPERATIONS OUT-OF-SERVICE ORDER**

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This is an Imminent Hazard Operations Out-of-Service Order (ORDER) issued pursuant to 49 U.S.C. § 521(b)(5)(A) and 49 C.F.R. § 386.72(b)(1) by authority delegated to the Regional Field Administrator, Eastern Service Center, Federal Motor Carrier Safety Administration (FMCSA), United States Department of Transportation (USDOT). This ORDER applies to JOHN K. KAMAU (referred to herein as “you,” and/or “your”), a commercial motor vehicle driver.

FMCSA finds that your continued operation of commercial motor vehicles, as defined in 49 C.F.R. § 390.5,<sup>1</sup> in interstate commerce constitutes an “**IMMINENT HAZARD.**” This finding means that based upon your present state of unacceptable safety compliance, your operation of a commercial motor vehicle in interstate commerce

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<sup>1</sup> Under 49 C.F.R. § 390.5, a commercial motor vehicle includes any self-propelled or towed motor vehicle used on a highway in interstate commerce to transport passengers or property when the vehicle—(1) has a gross vehicle weight rating or gross combination weight rating, or gross vehicle weight or gross combination weight, of 4,536 kg (10,001 pounds) or more, whichever is greater; or (2) is designed or used to transport more than 8 passengers (including the driver) for compensation; or (3) is designed or used to transport more than 15 passengers, including the driver, and is not used to transport passengers for compensation.

substantially increases the likelihood of serious injury or death if not discontinued immediately.

**EFFECTIVE IMMEDIATELY YOU MUST CEASE OPERATING ANY COMMERCIAL MOTOR VEHICLE IN INTERSTATE COMMERCE. YOU ARE PROHIBITED FROM OPERATING ANY COMMERCIAL MOTOR VEHICLE IN INTERSTATE COMMERCE AT ANY TIME DURING WHICH THIS ORDER IS IN EFFECT.**

If you are served this ORDER while operating a commercial motor vehicle in interstate commerce, you must immediately park such vehicle, and notify the operating motor carrier of this ORDER. You may not continue to operate the commercial motor vehicle.

**YOU MAY NOT LOAD OR TRANSPORT ANY ADDITIONAL CARGO, NOR MAY YOU OPERATE ANY COMMERCIAL MOTOR VEHICLE IN INTERSTATE COMMERCE WHILE THIS ORDER IS IN EFFECT.**

**I. JURISDICTION**

You are a driver of commercial motor vehicles in interstate commerce and are subject to, and required to comply with, the requirements of the Federal Motor Carrier Safety Regulations (FMCSRs) (49 C.F.R. Parts 350-399), as well as the Orders of the USDOT and FMCSA. See 49 U.S.C. §§ 506, 507, 13501, 31133, and 31306. You are required to comply with Federal statutes and regulations regarding driving of commercial motor vehicles, including those pertaining to applicable operating rules and alcohol consumption. 49 C.F.R. Parts 382 and 392.

## **II. BASIS FOR ORDER AND BACKGROUND**

The basis for determining that your continued operation of a commercial motor vehicle in interstate commerce poses an imminent hazard is that you took affirmative steps to conceal the fact that you are physically unqualified to drive a commercial motor vehicle (CMV) in interstate commerce in order to obtain a medical examiner's certificate, and then you repeatedly operated a CMV in interstate commerce without regard to Federal regulations or the safety of the motoring public.

On November 18, 2016 at approximately 2:30 p.m., you were operating a commercial motor vehicle (CMV) in interstate commerce northbound on Interstate 95 in York County, Maine. The passenger vehicle in the lane in front of your vehicle slowed down due to traffic. Your vehicle struck that passenger vehicle from behind, pushing it into a commercial motor vehicle in front of it, killing both occupants of the passenger vehicle. After the crash, investigators discovered an insulin prescription and syringes in your CMV.

Subsequently, an investigation revealed that you have an established medical history or clinical diagnosis of diabetes mellitus currently requiring insulin for control, and as such are not physically qualified to drive a CMV. 49 C.F.R. § 391.41(b)(3). A medical examiner informed you in May 2016 that you did not meet the physical qualification standards to drive a CMV and refused to issue you a medical examiner's certificate. You refused to comply with the physical qualification requirements, and instead went to a different medical examiner in September and concealed from that medical examiner the fact that you have diabetes mellitus and control it using insulin. By failing to disclose these facts to the medical examiner, you were able to obtain a medical certificate.

In 2014, you were involved in another crash in which the CMV that you were driving crashed into the rear of a passenger vehicle in the breakdown lane. You were cited in that accident for failing to take care in stopping.

Moreover, you have a history of convictions for unsafe driving. Your driving record shows that you have at least 11 convictions for speeding, 5 convictions for unsafe lane changes, and 7 convictions for failing to obey or stop at stop signs.

Your blatant disregard of the FMCSRs and disregard for the safety of the motoring public demonstrated by these actions substantially increases the likelihood of serious injury or death to you and/or to the motoring public.

### **III. REMEDIAL ACTION**

To abate this imminent hazard, and before you are permitted to resume operations placed out of service by this ORDER, you must take specific steps to ensure and demonstrate compliance with the FMCSRs. **You may not operate a commercial motor vehicle in interstate commerce until you have fully complied with the Remedial Actions outlined in this section.**

#### **YOU MUST COMPLY WITH ALL PROVISIONS OF THIS ORDER**

1. You must demonstrate to the satisfaction of the Regional Field Administrator, Eastern Service Center, that you meet all qualifications to drive a commercial motor vehicle, including all physical and medical qualifications, in compliance with 49 C.F.R. Parts 391 and 392.
2. You must provide documentation to the Field Administrator, Eastern Service Center, demonstrating that you have a valid commercial driver's license.
3. You must be evaluated by a qualified medical examiner who is familiar with DOT regulations and who issues you a valid medical certification after you have fully and truthfully completed the Medical Examination Report Form.
4. You must provide documentation to the Regional Field Administrator, Eastern Service Center, that you have been seen by a medical examiner after the date of the accident – November 18, 2016.

5. You must provide documentation to the Regional Field Administrator, Eastern Service Center that you has a valid commercial driver's license and valid medical examiner's certificate issued after the date of the accident – November 18, 2016.
6. You must demonstrate the following to the satisfaction of the Field Administrator, Eastern Service Center:
  - a. That you have completed a training course on the Federal Motor Carrier Safety Regulations (FMCSRs); and
  - b. That through the training, you have acquired the requisite knowledge of the rules and safety practices to operate a commercial motor vehicle in accordance with the FMCSRs.
7. You must comply with all Orders issued by FMCSA.

#### **IV. RECISSION OF ORDER**

You are subject to this ORDER unless and until the ORDER is rescinded by the FMCSA. Before operating any commercial motor vehicle, as defined in 49 C.F.R. § 390.5, in interstate commerce, you must comply with the provisions of this ORDER, eliminate the problems constituting the imminent hazard that your operation of a commercial motor vehicle poses, and adequately demonstrate to the Regional Field Administrator for the Eastern Service Center, Federal Motor Carrier Safety Administration, United States Department of Transportation, the actions taken to eliminate the safety problems. **You must have this ORDER rescinded by the Regional Field Administrator for the Eastern Service Center before conducting interstate operations.** This ORDER will not be rescinded until the Regional Field Administrator for the Eastern Service Center has determined that the Remedial Action requirements specified in Paragraph III of this ORDER have been fully satisfied and acceptable documentation is submitted. **You cannot avoid this ORDER by continuing to operate under another name or by driving for another motor carrier.**

Any request to rescind this ORDER, and documentation demonstrating satisfaction of the Remedial Action requirements must be directed to the Regional Field Administrator, Eastern Service Center, with a copy to the Division Administrator, Massachusetts Division, at the following addresses:

Field Administrator  
Eastern Service Center  
Federal Motor Carrier Safety Administration  
802 Cromwell Park Drive  
Suite N  
Glen Burnie, MD 21061

and

Division Administrator  
Massachusetts Division  
Federal Motor Carrier Safety Administration  
50 Mall Road  
Suite 212  
Burlington, MA 01803

**V. FAILURE TO COMPLY**

Failure to comply with the provisions of this ORDER may subject you to an action by the United States Attorney in the United States District Court for equitable relief and civil penalties. You may be assessed civil penalties of up to \$1,782 for violations of this ORDER. Each day that you operate in violation of the ORDER will constitute a separate penalty. (49 C.F.R. 386.72(b)(6)). Knowing and/or willful violation of the provisions of this ORDER may subject you to criminal penalties. (See 49 U.S.C. § 521(b)(6)).

**VI. ADDITIONAL PENALTIES FOR OTHER VIOLATIONS**

Any motor carrier or driver that violates Federal requirements, including the FMCSRs, is subject to civil and/or criminal penalty provisions. Penalty provisions for violations of Federal statutes and regulations are separate and distinct from this ORDER. Penalties may be assessed for the violations of Federal requirements,

including the FMCSRs, previously discovered, discovered after the service of this ORDER, and/or discovered during subsequent investigations.

**VII. RIGHT TO REVIEW**

You have the right to administrative review under 5 U.S.C. § 554 and 49 C.F.R. § 386.72(b)(4). If requested, administrative review must commence within ten days after the petition for review is filed and must be concluded as expeditiously as practicable but may run longer than ten days from the date of issuance of such Order or the filing of the petition for review. *See* 49 U.S.C. § 521(b)(5) and 49 C.F.R. § 386.72(b)(4)). A request for review must be addressed to the Assistant Administrator, United States Department of Transportation, Federal Motor Carrier Safety Administration, and should be sent to the attention of Adjudications Counsel by facsimile or electronic mail as follows:

By Fax:  
Adjudications Counsel (MC-CCA)  
(202) 366-3602

or electronic mail:  
FMCSA.Adjudication@dot.gov

with a copy mailed or sent by commercial delivery service to the Assistant Administrator and Adjudications Counsel at the following address:

Adjudications Counsel (MC-CCA)  
Federal Motor Carrier Safety Administration  
Office of Chief Counsel  
1200 New Jersey Avenue, S.E.  
Washington, DC 20590

A copy of any request for administrative review must also be sent to the Regional Field Administrator by mail and/or facsimile as follows:

Regional Field Administrator  
Eastern Service Center  
Federal Motor Carrier Safety Administration  
802 Cromwell Park Drive  
Suite N  
Glen Burnie, MD 21061  
Fax: (443) 703-2253

The request must state the material facts at issue which you believe dispute or contradict the finding that your operation of a commercial motor vehicle in interstate commerce constitutes an “**imminent hazard**” to the public.

**A REQUEST FOR ADMINISTRATIVE REVIEW DOES NOT IN ANY WAY DELAY YOUR DUTY TO COMPLY WITH THIS ORDER**

**IMMEDIATELY.** This ORDER is separate and independent from all other orders or actions that may be issued by FMCSA, and does not amend or modify any other such orders or actions. Any request for administrative review of this ORDER does not attach to or apply to any other order or action.

Date: December 9, 2016



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Curtis L. Thomas  
Regional Field Administrator  
United States Department of Transportation  
Federal Motor Carrier Safety Administration  
Eastern Service Center