

Testimony of Stephanie Pollack
MassDOT Secretary and CEO
Joint Committee on Transportation
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Good morning. Chairman Straus, Chairman Boncore, and members of the Committee. We are in this room this morning holding this hearing because of an unconscionable failure at the Registry of Motor Vehicles that contributed to the tragic death of seven innocent people, most veterans who had honorably served our country overseas and come home safe again only to lose their lives at the hands of an irresponsible young man who should not have been in possession of a Commercial Driver's License and should not have been driving a truck on June 21 in Randolph, New Hampshire. To anyone in this room who is family member or friend of those who were killed, I wish to express my deep sorrow and extend my most sincere apologies for the Registry's failure to fulfil its duties under the law. I know that there are no words that can adequately describe the pain that you are feeling or fill the emptiness in your home, your family and your heart.

Volodymyr Zhukovskyy refused to submit to a chemical test in East Windsor Connecticut on May 11. The Registry received not one but two notifications of this incident – one electronic, one written – yet did not suspend his Commercial Driver's License or CDL promptly, as the law requires. I will not mince words: the Registry of Motor Vehicles missed the opportunity to revoke this man's license to drive before the June 21st accident.

The members of this Committee and the public want to know how this could have happened and who is responsible, as do I. Perhaps most importantly, this Committee and the public want to know what the Registry has learned from this tragedy, what we are doing differently already and how we will make sure that the Registry carries out and prioritizes its public safety responsibilities into the future. That is why we have brought in an independent outside firm, Grant Thornton, to do a forensic review not only of this particular incident, but also of the Registry's processes, internal controls, and policies with respect to the timely processing of state to state communications. That is why, to the extent possible, we will cooperate with this Committee's oversight, not just today but in the coming weeks as we share with you what we learn from the Grant Thornton forensic audit.

You have been tasked by your colleagues in the General Court with the critically important job of overseeing the work of the Massachusetts Department of Transportation (MassDOT) and Registry of Motor Vehicles. This morning we will talk about what we've learned so far, share with you our progress on correcting the problems we have found, and discuss the work that continues and needs to be done. We have provided some documents in response to the Committee's request and will provide more in the days and weeks ahead. We welcome another hearing to share with you the findings of the forensic review and we will continue to provide you as much information as we can as that process unfolds.

I am as anxious as you all are to determine the what, why, and how of the events that unfolded as they did. This hearing, however, has been convened at a very early point in the process of understanding what went wrong. Because it has been only about one month since we discovered what happened – or, more accurately, what did not happen – at the Registry, I must tell you that we will not leave here today knowing all of the answers, for two reasons.

First, in the days and weeks since learning of the Registry's failure, my efforts and those of Acting Registrar Jamey Tesler and the team at the Registry have been focused primarily on taking action to suspend the licenses of unsafe drivers as expeditiously as possible. During this time the RMV has focused on processing the backlog of unprocessed mail notifications, establishing and implementing systems for expeditiously handling incoming notices, launching an effort to review all 5.2 million active drivers' records against the National Driver Registry and establishing a system to generate outgoing notices to other states. Given the amount of time this work has taken over the past several weeks, we are still at a relatively early stage in reconstructing what happened, when it happened and why.

Second, we must be careful not to compromise or undermine the Grant Thornton forensic review into the timeline and causes of the RMV's unsatisfactory handling of its state to-state notice and suspension obligations that only got underway during the week of July 8-12. That investigation will be independent, professional, and comprehensive. But it is at an early stage and we do not want to compromise its quality, independence or integrity. As we explained in a letter sent to the Committee co-chairs on Friday, Grant Thornton must be allowed to develop a credible, complete, and detailed timeline and assessment based on appropriate auditing methods and a full review of the available evidence. The integrity of Grant Thornton's ongoing investigation might easily be cast into doubt if any public statements were made at today's hearing that could improperly influence the memories and later testimony of others who will be interviewed as part of the Grant Thornton forensic audit.

Therefore, my testimony and that of Acting Registrar Jamey Tesler will focus primarily on the situation that confronted us at the RMV when we learned of the RMV's failure to process an out-of-state violation

notice that should have resulted in suspension of Volodymyr Zhukovskyy's Massachusetts commercial driver's license. We will talk about how these events surfaced failures related to priority-setting, processes and people. Today the Acting Registrar and I will talk primarily about priorities and processes: about ensuring that safety-critical activities at the Registry are properly prioritized and about diagnosing and fixing broken business processes for receiving communications from and sending communications to other states. I am not yet ready to talk in any detail about the people who failed to do their jobs and how they will be held accountable, but I assure you that day will come.

So please understand that, for the reasons stated above and due to Grant Thornton's ongoing investigation, we will not discuss in any detail events prior to late June relating to the RMV's handling of out-of-state notifications and suspensions. We look forward to sharing with you the results of the Grant Thornton review and plan on providing you with their reports and background documents and are of course willing to appear again before this committee at a later date to discuss what else we have discovered and what we will be doing about it.

Background and History

First, some background and history about the Registry. Massachusetts, like other states, has struggled to balance the many responsibilities that motor vehicle agencies have. The responsibility for licensing the motoring public and registering vehicles, both personal and commercial, involves elements of public safety, revenue collection and customer service. Increasingly, especially since federal "motor voter" legislation and the implementation of RealID and the rise of identity theft, motor vehicle agencies also play critical roles in secure identification, voter registration and identity management. In other states registries are parts of Public Safety agencies, Departments of Transportation, Revenue Departments, or split among any combination of those.

Here in Massachusetts, for many years the Registry of Motor Vehicles was a part of the Executive Office of Public Safety. The transportation reform legislation of 2004 moved the Registry under the new Executive Office of Transportation. The Registry stayed as a transportation agency in 2009 when legislation was enacted to create the Massachusetts Department of Transportation or MassDOT. The Merit Rating Board, which maintains and updates driving records and reports this information to insurers and government agencies, was not moved from EOPS to MassDOT until 2011.

Currently the Registry has over 775 Full Time Equivalent employees in 30 service centers and at the Quincy headquarters. The Registrar, the agency's chief executive officer, is appointed by the Secretary of

Transportation. I appointed Erin Deveney as interim Registrar in March of 2015, and installed her as permanent registrar in December 2015. Ms. Deveney had previously been Chief of Staff and General Counsel at the Registry from 2000 to 2005 and 2009 to 2014. After she resigned on June 25, I named Jamey Tesler as Acting Registrar.

The Registry works hard to balance its responsibilities to keep our roads safe, issue secure credentials and ensure that their security is maintained, and provide customers with excellent customer service. During the past four years we have worked hard to fulfill this broad mandate but I want to particularly highlight two inter-related areas of focus: implementation of a new technology platform called ATLAS and implementation of the federal RealID statute.

Although the federal RealID Act was a decade old when I joined MassDOT in 2015, implementation was stalled. One considerable impediment was the Registry's ancient license registration system, ALARS. The Registry was storing the licensure and registration data of millions of Massachusetts residents in a software system created in the time of black screens with green type, written in COBOL – a programming language dating back to the 1960s. Back in 2015, replacement of the 30-year old ALARS technology was also stalled, over-budget and thirteen months behind schedule with millions in taxpayer dollars spent and essentially no code to show for it. We worked with our colleagues in the General Court to enact needed enabling legislation for RealID and to implement this critical secure licensure program on ATLAS, our new post-ALARS software platform. This entailed terminating the prior software contract, surveying the current state of available technology, conducting a re-procurement under which FAST Enterprises was hired and launching the first release of ATLAS, which covered driver licensure and RealID, in March 2018. The second release, covering registration functions, is underway and currently scheduled for completion by the end of the year. New processes and procedures needed to be put in place to ensure that both Registry staff and the public were ready for the many licensing changes that RealID has brought. And we expanded our then-pilot with AAA to provide licensure and registration services, including RealID, at all AAA branches statewide. And, yes, we worked hard to improve customer service and reduce wait times, because customers who have no choice but to do business with the Registry are entitled to far better service than they had been receiving. Today, on top of those tasks, work is also underway to implement Automatic Voter Registration on January 1 and anticipatory work is underway to provide a non-binary gender choice on driver licenses.

I speak to this history and these issues not to provide an excuse for the Registry's failure to sufficiently prioritize some of its core public safety responsibilities, but to illustrate the multitude of roles and functions of the Registry and to assure you that this organization, for all of its shortcomings, is in fact capable of simultaneously and successfully re-inventing itself and getting all of its work done. The

Registry and its employees, the vast majority of whom are hard-working and caring, can and will re-prioritize and re-organize and create and implement new processes to enforce all of the laws that are intended to keep our roads safe by removing unsafe drivers' privilege to operate personal and/or commercial vehicles in Massachusetts and in other states.

Commercial Driver's Licenses

Now I would like to turn to the events of June 21st, the Registry's Commercial Driver's License program and what we have done to correct deficiencies in that program, including the legislation that we developed and Governor Baker filed on Friday that could help reduce the likelihood of unqualified, unsafe drivers being licensed to drive commercial vehicles.

First, we need to distinguish between issuance of driver's licenses for passenger vehicles, known as Class D licenses, and commercial driver's licenses. Class D licenses are issued by Massachusetts and the rules and regulations for issuance are entirely up to the state of Massachusetts, while the federal government creates the framework for CDLs. CDL guidelines are a combination of the U.S. Department of Transportation's Federal Motor Carrier Safety Administration (FMCSA) rules and individual state motor vehicle law. There are three classes of commercial driver's license – A, B, and C – which vary depending on the size and weight of the vehicle to be driven. These licenses also carry endorsements, which allow the operation of specific types of vehicles, such as school buses, passenger vehicles, semi trailers or tank trucks. Massachusetts has approximately 5.2 million drivers, of which approximately 110,000 also hold a CDL.

Many questions have been raised about how a person with Volodymyr Zhukovskyy's driving record could have obtained a commercial driver's license in the first place. His driving history actually began before he was licensed, as he was cited an accident in April 2012, before he even had his learner's permit. Less than two months after he received his license, as a 17-year-old Mr. Zhukovskyy caused another accident on June 16, 2014 and was found to be operating under the influence and in possession of alcohol in an open container. This incident led to a series of suspensions, for the alcohol offense itself, for underage drinking, and then two separate suspensions for having three surchargeable offenses. He was suspended from driving in Massachusetts from the time of his second accident until April, 2017. During that time, in Ohio in 2014 while under suspension in Massachusetts he was convicted of several motor vehicle violations. The Ohio offenses were identified through a check of the National Driver Registry when Mr. Zhukovskyy sought license reinstatement, triggering additional suspensions until April of 2017.

However, his driving record apparently remained clean thereafter, allowing him to receive a new Class D license in July 2017 and CDL in August 2018.

The good news is that with the second OUI offense from the May incident in Connecticut Mr. Zhukovskyy is now banned for life from obtaining a CDL. However, I find it troubling that someone who has had only one year of offense-free driving under his Class D license can obtain a CDL, but that is how the law currently works. It is eminently reasonable to require a history of good driving before allowing people to drive the largest vehicles on our roads.

Another issue raised by this case is that of the responsibility of CDL drivers and their employers, as well as that of the Registry, for acting when a serious violation has occurred. When a CDL holder commits an offense that should result in the termination of a CDL, three things should happen. Under current Massachusetts law, the CDL holder must notify the Registry, but no time frame is stated. The CDL driver must also notify his employer, but only within thirty days. Finally, the state in which the violation occurred must inform the state of license – in this case, Massachusetts – within ten days. In a moment I will discuss the Registry's failure to promptly process the notice from Connecticut. For me, this case also illustrates the importance of prompt notice by the CDL driver – who is the first to know of the violation – and that driver's employer.

Based on these insights and this driving history, Governor Baker filed legislation last Friday to strengthen commercial driving laws to further ensure that only safe and qualified drivers are behind the wheel. This legislation, if adopted, would raise Massachusetts standards for CDLs above the minimum federal requirements, as well as align various provisions of state statute governing CDLs with relevant federal requirements to eliminate any gaps between state law and the federal regulations the RMV implements. Key provisions of the legislation include:

- Requiring applicants for CDLs to show a history of good driving and making applicants ineligible if they have been suspended or disqualified for driving at any time in the past three years.
- Requiring employers of commercial drivers to sign up for the state's Driver Verification System (DVS), a free service that provides automatic notifications when an employee's CDL status changes. This service, in existence in Massachusetts for over 10 years, gives entities next-day notification if an employee's license has been suspended or revoked and when an employee's commercial driver's license expires.
- Lengthening the mandated suspension period for CDL operators who commit multiple serious traffic violations: raising suspensions from 60 to 120 days for drivers who commit two serious

traffic violations within a three-year period, and from 120 to 240 days for drivers who commit three serious violations in that window.

- Requiring a commercial driver provide next day notification to their employer and the Registry following a conviction of violating motor vehicle law of any state.
- Penalizing commercial drivers for failing to notify an employer or the Registry of suspensions or revocations of the right to operate a motor vehicle from any state.
- Addressing distracted driving by making texting while driving a commercial motor vehicle a serious traffic violation, subject to potential mandatory suspension requirements and also requiring that a driver use only hands-free operation of electronic devices while driving commercial motor vehicles.

Out of State Notifications Regarding CDLs

Returning to Mr. Zhukovskyy, shortly after the June 21 accident in Randolph NH we became aware of a May 11 violation in Connecticut that had not been entered into his driver's record via the national computer system used for CDLs, the Commercial Driver's License Information System or CDLIS. As explained by the American Association of Motor Vehicle Administrators (AAMVA), CDLIS is "a nationwide computer system that enables state driver licensing agencies (SDLAs) to ensure that each commercial driver has only one driver's license and one complete driver record."

Since March, 2018 Massachusetts has used the ATLAS software platform to manage communications about CDLs through CDLIS. Because of the way that ATLAS was programmed, and because the Connecticut notification included a future effective date for the suspension (rather than a date coinciding with the date of the chemical test refusal), the ATLAS system did not process the CDL suspension automatically. Whenever ATLAS cannot properly process an electronic notification from CDLIS, it generates a queue of unprocessed notices which must be addressed manually by RMV personnel. ATLAS "kicked out" the Connecticut notification about Zhukovskyy for manual review by RMV personnel. The ATLAS system produces reports with the status of this and other processing queues, but in this case no RMV personnel appear to have been assigned the task of reviewing the ATLAS-generated queue for unprocessed CDLIS out of state notices. As a result, a queue had developed of 365 CDLIS notices reflecting potentially serious offenses requiring manual review, which included the notice from Connecticut about Zhukovskyy.

We quickly responded to these findings with three actions:

- Teams from MassDOT and the RMV worked through the weekend to address this queue and enter all unacted upon CDL notices into the system. Of the 365 notices in the backlog, 353 were duplicates of other reports already adjudicated (most commonly drivers who have moved from one state to Massachusetts and old offenses reported to Massachusetts). The remaining twelve were alcohol related, nine of which were duplicative of other issues already adjudicated. The last three notices were processed and, thankfully, none of them triggered an immediate suspension – except for that of Mr. Zhukovskyy.
- The RMV worked with FAST to fix the ATLAS coding to allow the acceptance of any suspension date within one year of an automated suspension, rather than “kicking out” a notice for manual review, so that future notifications like that for Zhukovskyy will be processed electronically.
- Registry employees have now been assigned the task of reviewing this electronic queue daily. In the interim, the RMV’s State-to-State Unit has been assigned the responsibility to review the queue daily and complete the required manual reviews which will go to the top of an employee’s work queue. For the longer term, a new Out of State (OOS) Notifications Processing Unit, which will be under the direct supervision of the Acting Registrar for the time being, is being created to ensure adequate staff resources are available to process notifications regarding both CDL and non-CDL licenses in a timely manner. Job postings for six positions within this new unit will be open for applications by the close of business today.

While we believe these actions address the underlying cause of the Registry’s failure to act on the Connecticut notice through CDLIS, we are committed to ensuring that all aspects of the CDL program are operating in compliance with state and federal law. We have met with the Federal Motor Carrier Safety Administration, which oversees the timeliness and quality of state compliance with CDL regulations, and will of course act on any additional recommendations that FMCSA may make upon completion of its review.

Conclusions

The next set of issues that I know concerns this Committee go beyond the CDL program. Like all commercial drivers, Mr. Zhukovskyy also had a Class D drivers' license and so in addition to reviewing issues with state to state CDL notifications, we investigated the state to state notification system for regular passenger drivers. I will let Acting Registrar Tesler take up the issues he discovered.

To introduce Acting Registrar Tesler, he has served with distinction in Massachusetts government for the better part of the last twenty years, beginning as Deputy Legal Counsel to the Governor and Deputy General Counsel of the MBTA. Jamey was an integral part of the creation of MassDOT in 2009 working for then-Secretary Aloisi and later served as general counsel to Treasurer Steve Grossman. He returned to MassDOT in 2015 where he has served as an Assistant Secretary for Contracts and Procurement, playing a critical role in understanding the problems with the Green Line Extension procurement and successful effort to re-procure. He served as interim Chief of Staff for a year and then stepped into the role of Chief Operating Officer, where his many responsibilities included working closely with Registrar Deveney to fix various inadequate business processes. Jamey excels at understanding complicated issues and processes and making needed changes expeditiously and he is familiar with the Registry, its people, and its processes. While this is a temporary assignment for him, I have every faith he is the person to lead the Registry through this difficult time and restore the people of the Commonwealth's trust that the RMV is able to prioritize and carry out all of its responsibilities with respect to public safety and secure credentialing while also maintaining its recent gains in providing excellent customer service.