

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

NOTICE OF PENALTIES INCURRED AND DUE
FOR VIOLATIONS OF LAWS AND RULES

RECEIVED

SEP 18 2019

WASH. UT. & TP. COMM

PENALTY ASSESSMENT: TN-190692

PENALTY AMOUNT: \$200

Quality Behavioral Health
900 7th Street
Clarkston, WA 99403

The Washington Utilities and Transportation Commission (Commission) believes that Quality Behavioral Health (Quality Behavioral Health or Company) violated Washington Administrative Code (WAC) 480-31-130, Operation of Motor Vehicles, which adopts Title 49 Code of Federal Regulations (CFR) Part 391 – Qualifications of Drivers.

Revised Code of Washington (RCW) 81.04.405 allows penalties of \$100 for each violation. In the case of an ongoing violation, every day's continuance is considered a separate and distinct violation.

On July 12, 2019, Commission Motor Carrier Investigator Wayne Gilbert completed a routine safety investigation of Quality Behavioral Health and documented the following violations:

- **Two violations of Title 49 CFR 391.45(a) – Using a driver not medically examined and certified.** Quality Behavioral Health allowed its drivers Molly Mellstrom and Logan Zelmer to drive without having been medically examined and certified.

The Commission considered the following factors in determining the appropriate penalties for these violations:

1. **How serious or harmful the violations are to the public.** The violations noted are serious and potentially harmful to the public. Nonprofit transportation providers that use drivers not medically examined and certified put their customers and the traveling public at risk. These violations present serious safety concerns.
2. **Whether the violations were intentional.** Considerations include:
 - Whether the Company ignored Commission staff's (Staff) previous technical assistance; and
 - Whether there is clear evidence through documentation or other means that shows the Company knew of and failed to correct the violation.

In September 2008, Staff completed a routine safety investigation of Asotin County Mental Health, d/b/a The Rodgers Counseling Center, which resulted in a proposed "Satisfactory" safety rating.

On June 16, 2011, the Company filed with the Commission an application to change its corporate name from Asotin County Mental Health, d/b/a The Rodgers Counseling Center, to Quality Behavioral Health. In the application, the Company acknowledged its responsibility to comply with transportation safety regulations.

The Company knew or should have known about these requirements.

3. **Whether the Company self-reported the violations.** Quality Behavioral Health did not self-report these violations.
4. **Whether the Company was cooperative and responsive.** The Company was cooperative throughout the safety investigation, and expressed a desire to come into compliance.
5. **Whether the Company promptly corrected the violations and remedied the impacts.** In response to the safety investigation, Quality Behavioral Health submitted a letter to Staff on July 16, 2019, which stated that the Company has corrected the violations, and has implemented new procedures to prevent future occurrences of the violations.
6. **The number of violations.** Staff identified seven violation types with a total of 18 individual occurrences.
7. **The number of customers affected.** The Company employs 21 drivers, operates three motor vehicles with a seating capacity of seven or more passengers, and operates four vehicles that seat six or less passengers. Quality Behavioral Health traveled 15,253 miles in 2018. These violations presented a public safety risk.
8. **The likelihood of recurrence.** Staff identified process breakdowns within Quality Behavioral Health. Staff provided specific remedies to help the Company assess how well its safety management controls support safe operations and how to begin improving its safety performance. The Company was cooperative, willingly accepted technical assistance, and took immediate action to correct the violations.
9. **The Company's past performance regarding compliance, violations, and penalties.** On July 29, 2013, Quality Behavioral Health was penalized \$25 in Docket TN-130908 for failing to file a timely annual report and pay regulatory fees.

On May 21, 2015, the Company was penalized \$200 in Docket TN-150988 for failing to file its annual report and pay regulatory fees by the deadline.

On June 17, 2016, Quality Behavioral Health was penalized \$1,000 in Docket TN-160667 for failing to file its annual report and pay regulatory fees.

The Company has no history of penalties for safety violations.

10. **The Company's existing compliance program.** Robert Penkert, Operations Coordinator for Quality Behavioral Health, is responsible for the Company's safety compliance program.
11. **The size of the Company.** Quality Behavioral Health operates three motor vehicles with a seating capacity of seven or more passengers, operates four vehicles that seat six or less passengers, and employs 21 drivers. Quality Behavioral Health traveled 15,253 miles in 2018. The Company reported \$4,274,752 in gross revenue for 2018.

The Commission's Enforcement Policy provides that some Commission requirements are so fundamental to safe operations that the Commission will issue mandatory penalties for each occurrence of a first-time violation.¹ The Commission generally will assess penalties per type of violation, rather than per occurrence, for first-time violations of those critical regulations that do not meet the requirements for mandatory penalties. The Commission will assess penalties for any equipment violation meeting the Federal Motor Carrier Safety Administration's "out-of-service" criteria and also for repeat violations of critical regulations, including each occurrence of a repeat violation.

The Commission has considered these factors and determined that it should penalize Quality Behavioral Health \$200, calculated as follows:

- Two violations of Title 49 CFR 391.45(a) – Using a driver not medically examined and certified. This is a violation of a fundamental safety requirement. The Commission assesses a penalty of \$100 for each occurrence of this violation, for a total of \$200.

This information, if proven at a hearing and not rebutted or explained, is sufficient to support the penalty assessment.

Your penalty is due and payable now. If you believe either or both of the violations did not occur, you may deny committing the violation(s) and contest the penalty through evidence presented at a hearing or in writing. Alternatively, if there is a reason for either or both of the violations that you believe should excuse you from the penalty, you may ask for mitigation (reduction) of the penalty through evidence presented at a hearing or in writing. The Commission will grant a request for hearing only if material issues of law or fact require consideration of evidence and resolution in a hearing. Any request to contest the violation(s) or for mitigation of the penalty must include a written statement of the reasons supporting that request. Failure to provide such a statement will result in denial of the request. *See* RCW 81.04.405.

If you properly present your request for a hearing and the Commission grants that request, the Commission will review the evidence supporting your dispute of the violation(s) or application for mitigation in a Brief Adjudicative Proceeding before an administrative law judge. The administrative law judge will consider the evidence and will notify you of his or her decision.

¹ Docket A-120061 – Enforcement Policy of the Washington Utilities & Transportation Commission – Section V.

You must act within 15 days after receiving this notice to do one of the following:

- Pay the amount due.
- Contest the occurrence of the violation(s).
- Admit the violations but request mitigation of the penalty amount.

Please indicate your selection on the enclosed form and submit it electronically through the Commission's web portal **within FIFTEEN (15) days** after you receive this notice. If you are unable to use the web portal, you may submit it via email to records@utc.wa.gov. If you are unable to submit the form electronically, you may send a paper copy to the Washington Utilities and Transportation Commission, PO Box 47250, Olympia, Washington 98504-7250.

If you do not act within 15 days, the Commission may take additional enforcement action, including but not necessarily limited to suspending or revoking your certificate to provide regulated service, assessing additional penalties, or referring this matter to the Office of the Attorney General for collection.

DATED at Lacey, Washington, and effective August 30, 2019.

/s/ Rayne Pearson
RAYNE PEARSON
Director, Administrative Law Division

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION
PENALTY ASSESSMENT TN-190692

PLEASE NOTE: You must complete and sign this document, and send it to the Commission within 15 days after you receive the penalty assessment. Use additional paper if needed. I have read and understand RCW 9A.72.020 (printed below), which states that making false statements under oath is a class B felony. I am over the age of 18, am competent to testify to the matters set forth below and I have personal knowledge of those matters. I hereby make, under oath, the following statements.

1. **Payment of penalty.** I admit that the violations occurred and enclose \$200 in payment of the penalty.

2. **Contest the violation(s).** I believe that the alleged violation(s) did not occur for the reasons I describe below (**if you do not include reasons supporting your contest here, your request will be denied**):

a) I ask for a hearing to present evidence on the information I provide above to an administrative law judge for a decision.

OR b) I ask for a Commission decision based solely on the information I provide above.

3. **Application for mitigation.** I admit the violations, but I believe that the penalty should be reduced for the reasons set out below (**if you do not include reasons supporting your application here, your request will be denied**):

a) I ask for a hearing to present evidence on the information I provide above to an administrative law judge for a decision.

OR b) I ask for a Commission decision based solely on the information I provide above.

I declare under penalty of perjury under the laws of the State of Washington that the foregoing, including information I have presented on any attachments, is true and correct.

Dated: 9.12.19 [month/day/year], at Clarkston WA [city, state]

Quality Behavioral Health
Name of Respondent (company) – please print

Kelly Sandberg
Signature of Applicant

RCW 9A.72.020:

“Perjury in the first degree. (1) A person is guilty of perjury in the first degree if in any official proceeding he makes a materially false statement which he knows to be false under an oath required or authorized by law. (2) Knowledge of the materiality of the statement is not an element of this crime, and the actor’s mistaken belief that his statement was not material is not a defense to a prosecution under this section. (3) Perjury in the first degree is a class