

Service Date: January 12, 2024

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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

PENALTY ASSESSMENT: TV-230989

PENALTY AMOUNT: \$4,200

Nicholas Hylan
d/b/a Hylan Moving
213 Carswell Drive
Moses Lake, WA 98837

The Washington Utilities and Transportation Commission (Commission) believes Nicholas Hylan, d/b/a Hylan Moving (Hylan Moving or Company) violated Washington Administrative Code (WAC) 480-15-560, Vehicle and Driver Safety Requirements, which adopts Title 49 Code of Federal Regulations (49 C.F.R.) Part 391 – Qualifications of Drivers, 49 C.F.R. Part 395 – Hours of Service of Drivers, and – 49 C.F.R Part 396 - Inspection, Repair, and Maintenance.

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 December 1, 2023, Commission Motor Carrier Investigator Sandra Yeomans completed a routine safety investigation of Hylan Moving and documented the following violations:

- **Thirty-eight violations of 49 C.F.R. § 391.45(a) – Using a driver not medically examined and certified.** Hylan Moving allowed driver Nicholas Hylan to operate a motor vehicle without a valid medical certificate on 38 occasions between April 1, 2023 and September 30, 2023.
- **One violation of 49 C.F.R. § 391.51(a) – Failing to maintain driver qualification file on each driver employed.** The Company failed to maintain a driver qualification file for driver Nicholas Hylan.
- **Thirty violations of 49 C.F.R. 395.8(a)(1) - Failing to require a driver to prepare a record of duty status using the appropriate method.** The Company failed to require driver Nicholas Hylan to prepare a record of duty status on 30 occasions between September 1 and September 30, 2023.
- **One violation of 49 C.F.R. § 396.3(b) - Failing to keep minimum records of inspection and vehicle maintenance.** The Company failed to maintain minimum records of inspection and vehicle maintenance for its commercial motor vehicle.
- **One violation of 49 C.F.R. § 396.17(a) – Using a commercial vehicle not periodically inspected.** Hylan Moving failed to annually inspect its commercial motor vehicle.

The Commission considered the following factors in determining the appropriate penalties for this violation:

1. **How serious or harmful the violation is to the public.** The violations noted are serious and potentially harmful to the public. Household goods moving companies that: (1) use drivers who are not medically examined and certified, (2) fail to maintain driver qualification files, (3) fail to maintain records of duty status, (4) fail to keep minimum records of inspection and vehicle maintenance, and (5) use commercial motor vehicles not periodically inspected put their customers' belongings and the traveling public at risk. These violations present significant safety concerns.
2. **Whether the violation was 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.

On November 30, 2020, the Commission received the Company's application for household goods moving authority. In the application, Nicholas Hylan, owner of Hylan Moving, acknowledged the Company's responsibility to understand and comply with applicable motor carrier safety laws and regulations.

On December 16, 2020, Nicholas Hylan attended household goods training provided by Staff and acknowledged receiving training pertaining to motor carrier safety regulations.

The Company knew or should have known about these requirements.

3. **Whether the Company self-reported the violation.** Hylan Moving did not self-report these violations.
4. **Whether the Company was cooperative and responsive.** The Company was cooperative and responsive during the safety investigation.
5. **Whether the Company promptly corrected the violation and remedied the impacts.** Hylan Moving has provided staff with evidence that it has begun to correct the violations.
6. **The number of violations.** Staff identified eight violation types with a total of 74 individual occurrences during the routine safety investigation of Hylan Moving. Of those violations, Staff identified five violation types with 71 individual occurrences that warrant a penalty in accordance with the Commission's Enforcement Policy.
7. **The number of customers affected.** Hylan Moving last reported traveling 4,592 miles for 2022. These safety violations present a public safety risk.

8. **The likelihood of recurrence.** The Company was cooperative throughout the safety investigation and was provided technical assistance with specific remedies to help the Company assess how well its safety management controls support safe operations and how to begin improving its safety performance. In light of these factors, Staff believes the likelihood of recurrence is low.
9. **The Company's past performance regarding compliance, violations, and penalties.** The Company has no history of penalties for safety violations.
10. **The Company's existing compliance program.** Nicholas Hylan, owner, is responsible for the Company's safety compliance program.
11. **The size of the Company.** The Company employs one driver and operates one commercial motor vehicle. The Company reported \$101,937 in gross revenue in 2022.

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 by violation category, 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 Hylan Moving \$4,200 (Penalty Assessment), calculated as follows:

- Thirty-eight violations of 49 C.F.R. § 391.45(a) – Using a driver not medically examined and certified. The Commission assesses a penalty of \$100 for each occurrence of these critical-type violations, for a total of \$3,800.
- One violation of 49 C.F.R. § 391.51(a) – Failing to maintain driver qualification file on each driver employed. The Commission assesses a \$100 penalty for this first-time critical-type violation.
- Thirty violations of 49 C.F.R. 395.8(a)(1) – Failing to require a driver to prepare a record of duty status using the appropriate method. The Commission assesses a \$100 "per category" penalty for these first-time critical violations.
- One violation of 49 C.F.R. § 396.3(b) – Failing to keep minimum records of inspection and vehicle maintenance. The Commission assesses a \$100 penalty for this first-time critical-type violation.

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

- One violation of 49 C.F.R. § 396.17(a) – Using a commercial vehicle not periodically inspected. The Commission assesses a \$100 penalty for this first-time critical-type violation.

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 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 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 their decision.

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.
- Admit the violation 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 at <https://efiling.utc.wa.gov/Form> **within FIFTEEN (15) days** after you receive this Penalty Assessment.² 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 wish to make a payment online, please use this link: [Make a Payment Now \(wa.gov\)](#).³

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

² <https://efiling.utc.wa.gov/Form>.

³ <https://www.utc.wa.gov/documents-and-proceedings/online-payments/make-payment-now>

regulated service, assessing additional penalties, or referring this matter to the Office of the Attorney General for collection.

DATED at Lacey, Washington, and effective January 12, 2024.

/s/ Michael Howard
MICHAEL HOWARD
Director, Administrative Law Division

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION
PENALTY ASSESSMENT TV-230989

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.
 - [] Enclose \$4,200 in payment of the penalty.
 - OR [] Attest that I have paid the penalty in full through the Commission’s payment portal.

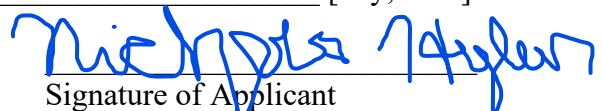
- [] 2. **Contest the violation(s).** I believe that the alleged violation(s) did not occur for the reasons I describe below **(if you do not include reasons supporting your contest here, your request will be denied):**
 - [] a) I ask for a hearing to present evidence on the information I provide above 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: _____ [month/day/year], at _____ [city, state]

Name of Respondent (company) – please print


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 or she makes a materially false statement which he or she 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 or her statement was not material is not a defense to a prosecution under this section.
- (3) Perjury in the first degree is a class B felony.