

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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

PENALTY ASSESSMENT: TN-170808
PENALTY AMOUNT: \$15,100

Cheney Care Foundation
d/b/a Cheney Care Center
2219 North 6th Street
Cheney, WA 99004-2199

The Washington Utilities and Transportation Commission (Commission) believes that Cheney Care Foundation d/b/a Cheney Care Center (Cheney Care Center or company) has committed violations of Washington Administrative Code (WAC) 480-31-100 Equipment – Safety and WAC 480-31-139 Operation of Motor Vehicles. Those provisions require non-profit transportation providers to comply with Title 49 Code of Federal Regulations (CFR) Part 391 Qualification of Drivers, Part 395 Hours of Service of Drivers, and Part 396 Inspection, Repair and Maintenance.

RCW 81.04.405 allows penalties of one hundred dollars for each violation of a Commission rule. In the case of an ongoing violation, every day's continuance is considered a separate and distinct violation.

In June 2017, Commission Motor Carrier Investigator Sandi Yeomans conducted a compliance review of Cheney Care Center and documented the following violations:

- **One-hundred two violations of Title 49 CFR Part 391.45(a) – Using a driver not medically examined and certified.** While examining trip records covering the six months prior to the compliance review, staff identified 102 days¹ on which one of four employees drove a company vehicle without being medically examined and certified:
 - Employee Danny Morris drove on 36 days between November 2016 and May 2017.
 - Employee Monica Smith drove on 48 days between November 2016 and May 2017.
 - Employee Jared Trawick drove on nine days between January and May 2017.
 - Employee Bernard Fritz drove on nine days in April 2017.

¹ One or more trips per day.

- **Forty-seven violations of Title 49 CFR Part 395.8(a)(1) – Failing to require a driver to prepare a record of duty status using appropriate method.** Cheney Care Center failed to require its drivers to record total time on duty on 47 time occasions.
- **Two violations of Title 49 CFR Part 396.3(b) – Failing to keep minimum records of inspection and vehicle maintenance.** Cheney Care Center had no maintenance files for either of the two vehicles it operated during the review period.
- **Forty-seven violations Title 49 CFR Part 396.11(a) – Failing to require driver to prepare a driver vehicle inspection report.** Cheney Care Center failed to require its drivers to prepare driver vehicle inspection reports on 47 occasions.

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

1. **How serious or harmful the violation is to the public.** The violations noted are serious and potentially harmful to the public. Companies that fail to ensure that its drivers are medically examined and certified, record its drivers' total hours on-duty, or maintain vehicle inspection and maintenance records put the traveling public at risk. A driver with an undetected medical condition, a fatigued driver, or a vehicle with questionable maintenance all present serious safety concerns.
2. **Whether the violation is intentional.** Considerations include:
 - Whether the company ignored Commission staff's 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.

Staff conducted a compliance review of Cheney Care Center in May 2007 and noted violations for using a driver not medically examined and certified and failure to require drivers to perform daily vehicle inspections. Staff provided technical assistance. Keith Fauerso, Executive Director of Cheney Care Center, responded to the violations and submitted a compliance plan which met the satisfaction of staff. A follow-up review in July 2007 revealed no similar violations, demonstrating that the company understood these requirements and was able to comply.

3. **Whether the company self-reported the violation.** The company did not self-report these violations.
4. **Whether the company was cooperative and responsive.** Cheney Care Center was cooperative and responsive throughout the investigation.
5. **Whether the company promptly corrected the violations and remedied the impacts.** The company corrected the medical certifications during the review. The company committed verbally to correcting the other violations as well, however staff is not aware that this has yet been done. Because of the proposed unsatisfactory safety rating resulting

from this review, the company must submit an approved safety management plan to correct all acute and critical violations. Staff will review this plan when it is submitted.

6. **The number of violations.** The number of violations is significant for a company the size of Cheney Care Center.
7. **The number of customers affected.** The company traveled 23,526 miles and reported \$4,460,496 in gross revenue for its entire operation for 2016. With transportation being provided on a near-daily basis, it is likely that a significant number of customers, as well as the traveling public, were affected by these safety violations.
8. **The likelihood of recurrence.** The Commission does not know if Cheney Care Center is likely to repeat these violations, but the company was cooperative and receptive of staff's assistance. Staff expects that the company will submit a safety management plan that corrects the violations and creates adequate management controls for the company to stay in compliance.
9. **The company's past performance regarding compliance, violations, and penalties.** Staff conducted a compliance review in 2007 and noted violations for using a driver not medically examined and certified and also for failure to require drivers to perform daily vehicle inspections. The Commission did not assess penalties for those violations. A follow-up review in July 2007 revealed no similar violations.
10. **The company's existing compliance program.** Cheney Care Center has no formal safety management or compliance program.
11. **The size of the company.** Cheney Care Center is a small non-profit transportation provider, operating two vehicles with four drivers.

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.² 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 found in future compliance investigations, including each occurrence of a repeat violation.

The Commission has considered these factors and determined that it should penalize Cheney Care Center \$15,100 for violations of WAC 480-31-100 Equipment – Safety and WAC 480-31-139 Operation of Motor Vehicles, calculated as follows:

- One-hundred two violations of Title 49 CFR Part 391.45(a) – Using a driver not medically examined and certified. The Commission's policy is to issue a \$100 penalty

² Docket A-120061 – Enforcement Policy of the Washington Utilities & Transportation Commission – Section V.

for each occurrence of this violation, including first-time violations. In this instance, these are repeat violations. The Commission assesses a penalty of \$100 for each of 102 occurrences of this violation, for a total of \$10,200.

- Forty-seven violations of Title 49 CFR Part 395.8(a)(1) – Failing to require a driver to prepare a record of duty status using appropriate method. As a first-time violation, the Commission assesses a penalty of \$100 for a single violation of this type.
- Two violations of Title 49 CFR Part 396.3(b) – Failing to keep minimum records of inspection and vehicle maintenance. As a first-time violation, the Commission assesses a penalty of \$100 for a single violation of this type.
- Forty-seven violations Title 49 CFR Part 396.11(a) – Failing to require driver to prepare a driver vehicle inspection report. These are repeat violations. The Commission assesses a penalty of \$100 for each of 47 occurrences of this violation, for a total of \$4,700.

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 any or all of the violations did not occur, you may deny committing the violation(s) and contest the penalty assessment 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 concerning the violation(s) require consideration of evidence and resolution in a hearing. Any contest of the penalty assessment must include a written statement of the reasons supporting that contest. Failure to provide such a statement will result in denial of the contest.

If there is a reason for any or all of the violations that you believe should excuse you from the penalty, you may ask for mitigation (reduction) of this 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 for mitigation 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.

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 violations.
- Request mitigation to contest the amount of the penalty.

Please indicate your selection on the enclosed form and send it to the Washington Utilities and Transportation Commission, Post Office Box 47250, Olympia, Washington 98504-7250, **within FIFTEEN (15) days** after you receive this notice.

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 Olympia, Washington, and effective August 17, 2017.



DENNIS J. MOSS
Administrative Law Judge

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION
PENALTY ASSESSMENT TN-170808

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 violation occurred and enclose \$ _____ in payment of the penalty.

2. **Contest the violation.** I believe that the alleged violation 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 violation, 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 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 B felony.”

