

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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

PENALTY ASSESSMENT: TV-170991
PENALTY AMOUNT: \$700

ABC Movers Seattle, LLC
d/b/a Kangaroo Movers
12040 28th Avenue B-2
Seattle, WA 98125

The Washington Utilities and Transportation Commission (Commission) believes that ABC Movers Seattle, LLC d/b/a Kangaroo Movers (ABC Movers) has committed violations of Washington Administrative Code (WAC) 480-15-570 Driver Safety Requirements, 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 one hundred dollars for each violation. In the case of an ongoing violation, every day's continuance is considered a separate and distinct violation.

In July 2017, Commission Motor Carrier Investigator Sandi Yeomans conducted a compliance review of ABC Movers and documented the following violations:

- **Seven violations of Title 49 CFR Part 391.45(a) – Using a driver not medically examined and certified.** ABC Movers allowed employee Nikita Nemykin to drive on seven separate occasions during the six months preceding the compliance review. Mr. Nemykim drove daily from February 1 through 7, 2017, without having a current medical certificate.

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 use drivers not medically examined and certified put the traveling public at risk. A driver with an undetected medical condition presents 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.

In the company's June 26, 2014 application for household goods moving authority, Nikita Nemykin, member/owner of ABC Movers, acknowledged his company's responsibility to understand and comply with applicable motor carrier safety rules.

On November 12, 2014, Mr. Nemykin and his business partner Roman Chuykin attended household goods training provided by Commission staff. Both acknowledged receiving training pertaining to motor carrier safety regulations.

In January 2017, Ms. Yeomans conducted a compliance review of ABC Movers and documented identical violations of Title 49 CFR Part 391.45(a) using a driver not medically examined and certified.

The company knew, or should have known about these requirements.

3. **Whether the company self-reported the violation.** The company did not self-report these violations.
4. **Whether the company was cooperative and responsive.** ABC Movers was cooperative and responsive throughout the investigation.
5. **Whether the company promptly corrected the violations and remedied the impacts.** The company had already taken action in February to correct the violations found during the July compliance review.
6. **The number of violations.** For a company the size of ABC Movers the number of violations is insignificant.
7. **The number of customers affected.** The company traveled 22,200 miles and reported \$386,469 in gross revenue for 2016. A significant number of customers, as well as members of the traveling public, were likely affected by these safety violations.
8. **The likelihood of recurrence.** The Commission does not know if ABC Movers is likely to repeat these safety violations, however, the company was cooperative and responsive to staff, and had already taken the appropriate steps to correct the safety violations documented in the compliance review.
9. **The company's past performance regarding compliance, violations, and penalties.** This is the company's second compliance review. The Commission penalized the company in February 2017 for the same violation.
10. **The company's existing compliance program.** ABC Movers does not have a formal compliance program.
11. **The size of the company.** ABC Movers is a small company with two drivers and two vehicles.

The Commission's Enforcement Policy provides that some Commission requirements are so fundamental to safe operation 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 found in future compliance investigations, including each occurrence of a repeat violation.

The Commission has considered these factors and determined that it should penalize ABC Movers \$700 for violations of WAC 480-15-570 Driver Safety Requirements, calculated as follows:

- Seven violations of Title 49 CFR Part 391.45(a) – Using a driver not medically examined and certified. The Commission assesses a penalty of \$100 for each occurrence of this critical violation, for a total of \$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.

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

- 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 September 26, 2017.

/s/ Gregory J. Kopta
GREGORY J. KOPTA
Administrative Law Judge

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION
PENALTY ASSESSMENT TV-170991

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.”