

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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

**PENALTY ASSESSMENT: TV-201009
PENALTY AMOUNT: \$100**

Diarra Moving & Delivery Services LLC
PO Box 821049
Kenmore, WA 98028-1049

The Washington Utilities and Transportation Commission (Commission) believes Diarra Moving & Delivery Services LLC (Diarra Moving or Company) violated Washington Administrative Code (WAC) 480-15-570, Driver Safety Requirements, which adopts Title 49 Code of Federal Regulations (49 CFR) Part 391 – Qualification 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 December 29, 2020, Commission Motor Carrier Investigator Sandra Yeomans completed a safety investigation of Diarra Moving and documented the following violation:

- **One violation of 49 CFR § 391.51(b)(9) – Failing to place a note related to the verification of the medical examiner's listing on the National Registry of Certified Medical Examiners required by 391.23(m) in driver qualification file(s).** Diarra Moving failed to verify the medical examiner listed on the medical certificate of driver Mpaly Diarra with the national registry.

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

1. **How serious or harmful the violation is to the public.** The violation noted is serious and potentially harmful to the public. Household goods moving companies that fail to verify whether medical examiners are qualified to issue medical certificates put their customers' belongings and the traveling public at risk. This violation presents 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 January 17, 2018, the Commission received the Company's application for household goods moving authority. In the application, Mpaly Diarra, owner of Diarra Moving,

acknowledged the Company's responsibility to understand and comply with applicable motor carrier safety regulations.

On November 7, 2018, Mpaly Diarra attended household goods training provided by Staff and acknowledged receiving training pertaining to motor carrier safety regulations.

On September 16, 2019, Staff completed a routine safety investigation of Diarra Moving and documented one violation of 49 CFR § 391.51(b)(9). The Company knew or should have known about these requirements.

3. **Whether the Company self-reported the violation.** Diarra Moving did not self-report the violation.
4. **Whether the Company was cooperative and responsive.** The Company was cooperative throughout the safety investigation and expressed a desire to come into compliance with motor carrier safety regulations.
5. **Whether the Company promptly corrected the violation and remedied the impacts.** Diarra Moving corrected the violation during the safety investigation.
6. **The number of violations.** Staff identified 11 violation types with a total of 14 individual occurrences.
7. **The number of customers affected.** Diarra Moving traveled 13,818 miles in 2019. This safety violation presented a public safety risk.
8. **The likelihood of recurrence.** Staff 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. The Company was cooperative throughout the safety investigation, expressed a desire to come into compliance, and immediately took corrective action during the safety investigation. Despite this being a repeat violation, Staff believes the likelihood of recurrence is low considering these factors.
9. **The Company's past performance regarding compliance, violations, and penalties.** On October 9, 2019, Diarra Moving was penalized \$600 for safety violations. The Company paid the penalty in full.
10. **The Company's existing compliance program.** Mpaly Diarra is responsible for the Company's safety compliance program.
11. **The size of the Company.** Diarra Moving currently operates one commercial motor vehicle and employs one driver. The Company reported \$55,000 in gross revenue for 2019.

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 Diarra Moving \$100, calculated as follows:

- One violation of 49 CFR § 391.51(b)(9) – Failing to place a note related to the verification of the medical examiner's listing on the National Registry of Certified Medical Examiners required by 391.23(m) in driver qualification file(s). The Commission assesses a penalty of \$100 for this repeat 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 violation did not occur, you may deny committing the violation and contest the penalty through evidence presented at a hearing or in writing. Alternatively, if there is a reason for the violation 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 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 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 **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

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

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 January 7, 2021.

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

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION
PENALTY ASSESSMENT TV-201009

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 \$100 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.”