

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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

PENALTY ASSESSMENT: TV-170679

PENALTY AMOUNT: \$11,300

Philip E. Pettinger
d/b/a Pettinger Family Movers Company
4304 E 41st Street
Spokane, WA 99223

The Washington Utilities and Transportation Commission (Commission) believes that Pettinger Family Movers Company (Pettinger Movers) has committed violations of Washington Administrative Code (WAC) 480-15-570 Driver Safety Requirements, which requires household goods carriers to comply with Title 49 CFR, Part 391 – Qualifications of Drivers.

Revised Code of Washington (RCW) 81.04.405 allows penalties of one hundred dollars for each violation of Title 49 CFR Part 391. In the case of an ongoing violation, every day's continuance is considered a separate and distinct violation.

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

- **One-hundred thirteen violations of Title 49 CFR Part 391.45(a) – Using a driver not medically examined and certified.** Company owner Phillip Pettinger drove five times in October, twenty-three times in November, and twenty-two times in December, 2016, and twenty-one times in January, fourteen times in February, twenty-seven times in March, and one time in April, 2017.

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 employ drivers who are not medically examined and certified put the traveling public at risk. 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.

Pettinger Movers first applied for household goods moving authority in 2011. In its application for authority, owner Phillip E. Pettinger acknowledged his company's

responsibility for understanding and complying with applicable federal, state and commission laws and rules. Also in 2011, Mr. Pettinger attended household goods carrier training provided by the commission, and commission staff conducted a new entrant compliance review and provided technical assistance. Mr. Pettinger applied for household goods moving authority again in 2016 and acknowledged his responsibility to understand and comply with applicable safety regulations. 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.** Pettinger Movers was cooperative and responsive.
5. **Whether the company promptly corrected the violations and remedied the impacts.** Pettinger Movers was cooperative and appeared to be interested in coming into full compliance, but staff is not aware if Mr. Pettinger has obtained a medical certificate.
6. **The number of violations.** For six months, Pettinger Movers' only driver drove nearly every day without a medical certificate. The number of occurrences is significant.
7. **The number of customers affected.** The company traveled 66,000 miles and reported \$134,000 in gross revenue for 2016. The company owner drove 113 times in a six month period, nearly every day. A significant number of customers, as well as the traveling public, were likely affected by these safety violations.
8. **The likelihood of recurrence.** The Commission does not know if the company is likely to repeat these violations, but the company was cooperative and receptive of staff's assistance.
9. **The company's past performance regarding compliance, violations, and penalties.** A new entrant compliance review was conducted in 2011, at which time two minor, unrelated violations were noted. No penalties were assessed. The company was penalized \$150 in 2013 and \$1,000 in 2014 for failing to submit annual reports for the previous year.
10. **The company's existing compliance program.** Pettinger Movers has no formal compliance program.
11. **The size of the company.** Pettinger Movers operates two commercial vehicles and has one driver. The company reported \$134,000 in gross revenue and 66,000 miles traveled in 2016.

These are first-time violations, but 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 other first-time violations of critical regulations that do not meet the criteria for mandatory penalties. The Commission will assess penalties for any repeat violations of critical regulations found in future compliance investigations, including for each occurrence of a repeat violation.

The Commission has considered these factors and determined that it should penalize Pettinger Movers \$11,300 for violations of WAC 480-15-570 Driver Safety Requirements, which adopts CFR Part 391, calculated as follows:

- One-hundred thirteen 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 violation, for a total of \$11,300.

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:

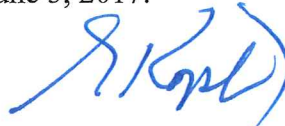
- Pay the amount due.
- Contest the occurrence of the violations.
- Request mitigation to contest the amount of the penalty.

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

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 June 5, 2017.



GREGORY J. KOPTA
Administrative Law Judge

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION
PENALTY ASSESSMENT TV-170679

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.”