



STATE OF WASHINGTON
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION
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Date: September 12, 2017

To: Greg Kopta, Director, Administrative Law

From: Mathew Perkinson, Motor Carrier Safety Manager

Re: TN-170808 and TN-170809 Cheney Care Foundation dba Cheney Care Center
Evaluation of Safety Management Plan and recommendations regarding the company's safety rating, the cancellation of its private, non-profit operating authority (C-1069), and associated penalties.

On August 16, 2017, staff completed a compliance investigation of Cheney Care Foundation dba Cheney Care Center (Cheney Care Center) which resulted in a proposed *unsatisfactory* safety rating.

Federal law incorporated into WAC 480-31-130 prohibits motor carriers transporting passengers in commercial motor vehicles from operating beginning the 46th day after the date of the notice of a proposed unsatisfactory safety rating. A company may request a change to its safety rating based on evidence that the company has taken corrective actions to address the identified violations and that company operations currently meet the safety fitness standard specified in 49 CFR 385.5 and 385.7. In this case Cheney Care Center has until October 2, 2017, to come into compliance with applicable laws and rules by obtaining commission approval of a safety management plan.

The proposed unsatisfactory safety rating was based on 198 violations of critical regulations – 49 C.F.R. 391.45(a), 395.8(a)(1), 396.3(b), and 396.11(a). “Critical” regulations are those identified as such where non-compliance relates to management and operational controls. These are indicative of breakdowns in a carrier's management controls. Patterns of non-compliance with a critical regulation are linked to inadequate safety management controls and higher than average accident rates.

The investigation resulted in a penalty assessment of \$15,100 due to the critical violations discovered by Staff (Docket Number TN-170808).

The critical violations discovered during the investigation are as follows:

1. **Five violations (102 occurrences) of CFR 391.45(a).** From November 2016 to May 2017, the company allowed drivers Bernard Fritz, Danny Morris, Monica Smith, Jared Trawick, and Larry Skeels to operate company vehicles while not medically certified.
2. **47 violations of CFR 395.8(a)(1).** From December 2016 to May 2017, the company allowed drivers Bernard Fritz, Danny Morris, Monica Smith, and Jared Trawick to operate company vehicles and

failed to require its drivers to make a record of duty status. The company failed have its drivers record the total time on timecards.

3. **Two violations of CFR 396.3(b).** From December 2016 to May 2017, the company had no maintenance files for the two vehicles reviewed - VIN 1FDXE45571HB00189 and 1FDFG4FS6DDA30951.
4. **47 violations of CFR 396.11(a).** From March 2017 to May 2017, the company allowed drivers Monica Smith and Jared Trawick to operate company vehicles but failed to prepare a vehicle inspection report for each day the vehicles were operated.

Cheney Care Center received notice of its proposed unsatisfactory safety rating on August 16, 2017, and the 45 day period to request and receive a safety rating upgrade ends on October 2, 2017. The company also received information explaining the requirements it was to meet in its safety management plan.

In an August 17, 2017, Notice of Intent to Cancel Certificate, the commission instructed the company to submit its proposed safety management plan no later than 3 p.m. on Friday, September 22, 2017.

On August 30, 2017, Cheney Care Center submitted an application for mitigation (Docket TN-170808) signed by Keith A. Faurso, Executive Director and Administrator of Cheney Care Center. In its application the company admits the violations but asks the Commission to reduce the assessed penalty based on corrective actions. The application requests that the commission make a decision based solely on the information provided. Staff considers the application for mitigation a request to upgrade the company's safety rating.

Evaluation of Safety Management Plan

1. **The plan must address each acute, critical, or serious violation discovered during the most recent compliance investigation. Corrective actions to address other violations noted during the investigation must also be included.**
 - The safety management plan addresses all violations noted during the most recent compliance investigation. The plan includes remedies for each of the critical and non-critical safety violation.
2. **Identify why the violations were permitted to occur.**
 - Cheney Care Center explains that it was unaware of some requirements, it failed to document work that was performed, and the requirement to meet federal and state regulations was not relayed from retiring to current staff. Cheney Care Center recognizes its responsibility to understand the rules required to operate and has taken steps to ensure the violations do not occur in the future. Individual staff within Cheney Care Center are now assigned specific duties related to the violations discovered during the compliance investigation.
3. **Discuss the actions taken to correct the deficiency or deficiencies that allowed the violations to occur. Include actual documentation of this corrective action. (For example: documentation may include items such as new policies and procedures, training programs and sign-in lists, or copies of new forms.**
 - Cheney Care Center took several steps to ensure the violations were corrected. Specific responsibilities and duties are now assigned to Danny Morris, Transportation Lead and Lora Arp, Transportation Head.
 - Cheney Care Center provided medical certificates for each current driver and will utilize Outlook as a tracking and reminder tool to ensure future compliance.

- Cheney Care Center will ensure (on a weekly basis) that records of duty status are checked against its electronic time clock system and reviewed for accuracy. The company submitted supporting documentation.
- Cheney Care Center states that it always maintained its vehicles and after being informed of violations related to its vehicle maintenance program the company put into place a documented inspection, repair and maintenance program. Cheney Care Center established a “formal system” for maintenance requirements. The system includes forms to follow for maintenance and inspection intervals. The company submitted supporting documentation.
- Cheney Care Center modified its driver vehicle inspection report to comply with the federal and state requirements and provided documentation.
- Cheney Care Center submitted an updated MCS-150 form.
- Cheney Care Center updated its employment application which will ensure that the proper background checks are performed. The company submitted supporting documentation.
- Cheney Care Center will use Outlook calendar reminders to eliminate any confusion related to making inquiries into the driving record of each driver at least once every 12 months.
- Cheney Care Center will review the driving record of each driver and document the review going forward.
- Cheney Care Center created a driver qualification file for driver Jared Trawick in May 2017.
- Cheney Care Center will obtain statements from its first time or intermittent drivers that will provide the total time on duty during the preceding seven days.
- Cheney Care Center will use a form to document the testing of its pushout windows, emergency doors, and emergency door marking lights.
- Cheney Care Center will document its periodic inspections. A copy of an annual periodic inspection was provided for both of the vehicles that were found in violation.

4. Outline actions taken to ensure that similar violations do not reoccur in the future. YOU MUST DEMONSTRATE THAT YOUR OPERATIONS CURRENTLY MEET THE SAFETY STANDARD AND FACTORS SPECIFIED IN 49 CFR 385.5 and 385.7. To do so, you must demonstrate that you now have adequate safety management controls in place which function effectively to ensure acceptable compliance with applicable safety requirements.

- Cheney Care Center’s plan assigns responsibilities to specific positions within the organization, implements new forms, and suggests that the company will have a more effective record retention process going forward. The new assigned duties, forms, and Outlook tools will likely prevent similar violations from occurring in the future. The company has taken substantial steps to ensure similar violations do not happen again in the future.

5. If the request includes actions that will be conducted in the near future, such as training, reorganization of departments, purchasing of computer programs, etc., companies must include a detailed description of the activity or training and a schedule of when that activity will commence and when it will be completed.

- Cheney Care Center did not include such items in its request.

6. **Include any additional documentation relating to motor carrier safety and the prevention of crashes that you believe supports your request.**
 - No additional documentation was submitted with the plan to support the request.
7. **Include a written statement certifying the carrier will operate within federal and state regulations and the carrier's operation currently meets the safety standard and factors specific in 49 CFR 385.5 and 385.7. A corporate officer; partner, or the owner of the company must sign the statement.**
 - The plan states that there was a staffing change in its transportation department and it failed to follow the requirements of the law. All of the violations were corrected immediately when possible and the company ceased operation until the violations were corrected. Mr. Fauerso, Executive Director and Administrator submits that he implemented changes and systems so the violations will never happen again. Mr. Fauerso requests forgiveness and mitigation.

Summary and Recommendations

- Cheney Care Center submitted a safety management plan and mitigation request that addresses each violation, identifies how they occurred, describes the steps taken to correct them, and puts controls in place to ensure the company maintains compliance. Documentation of medical certificates, records of duty status, vehicle maintenance forms, annual inspections, daily vehicle inspection reports, employment applications, driver background checks, and driving abstracts were provided.
- Staff reviewed Cheney Care Center's proposed safety management plan and concludes it is acceptable and meets the requirements of 49 CFR, Part 385. The reasons for staff's position are listed above.
- Staff recommends the commission upgrade the companies operating authority to *conditional*, effective by Monday, October 2, 2017.
- Staff also recommends that a follow-up non-rated compliance investigation be conducted in one year (October 2018.)
- Staff recommends consolidating Docket TN-170808 and TN-170809. Staff contacted Cheney Care Center and it stated that it had no objection to consolidating the dockets.

Penalty Recommendation

- The Commission issued a penalty assessment of \$15,100 in TN-170808.
 - The company has taken steps to bring its operations into compliance.
 - Because of the company's actions, staff recommends that the commission assess a reduced penalty of \$7,550 and suspend \$3,775 of the reduced penalty for a period of one year – with conditions:
 - The company does not incur any repeat critical violations of WAC 480-31-130 upon re-inspection in one year.
 - The company maintains a conditional safety rating.
 - If repeat violations of critical regulations are found in the compliance investigation in October 2018, or in any other compliance investigation before that, staff would recommend that the entire suspended penalty be imposed.

- The remaining \$3,775 penalty is due and payable immediately; however staff would support a payment arrangement if requested.