

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, DC

ORDER NO. 10,734

IN THE MATTER OF:

Served September 5, 2007

WESTVIEW MEDICAL & REHABILITATION)
SERVICES, P.C. INC., Suspension and) Case No. MP-2007-070
Investigation of Revocation of)
Certificate No. 510)

This matter is before the Commission on respondent's response to Order No. 10,640, served July 18, 2007.

I. BACKGROUND

Under the Compact, a WMATC carrier may not engage in transportation subject to the Compact if the carrier's certificate of authority is not "in force."¹ A certificate of authority is not valid unless the holder is in compliance with the Commission's insurance requirements.²

Commission Regulation No. 58 requires respondent to insure the revenue vehicles operated under Certificate No. 510 for a minimum of \$1.5 million in combined-single-limit liability coverage and maintain on file with the Commission at all times proof of coverage in the form of a WMATC Certificate of Insurance and Policy Endorsement (WMATC Insurance Endorsement) for each policy comprising the minimum.

Certificate No. 510 was rendered invalid on April 13, 2007, when the \$1 million primary WMATC Insurance Endorsement on file for respondent terminated without replacement. Order No. 10,404, served April 13, 2007, noted the automatic suspension of Certificate No. 510 pursuant to Regulation No. 58-02, directed respondent to cease transporting passengers for hire under Certificate No. 510, and gave respondent thirty days to replace the cancelled endorsement and pay the \$50 late fee due under Regulation No. 67-03(c) or face revocation of Certificate No. 510.

Respondent paid the \$50 late fee on May 14, 2007, and submitted a \$1 million primary WMATC Insurance Endorsement on June 15, 2007. The effective date of the new endorsement is June 13, 2007. Thus, it appeared respondent was without primary insurance coverage for sixty-one days, from April 13, 2007, through June 12, 2007.

Under Commission Rule No. 28, respondent is required to verify that it ceased transporting passengers for hire under Certificate No. 510 as directed by Order No. 10,404. Order No. 10,640 accordingly gave respondent thirty days to verify that it ceased operations as of April 13, 2007. Inasmuch as respondent's general tariff covers

¹ Compact, tit. II, art. XI, § 6(a).

² Compact, tit. II, art. XI, § 7(g).

service rendered to the general public and to clients of the District of Columbia Department of Health, Medical Assistance Administration (DC Medicaid), respondent was to corroborate its verification with confirmation from DC Medicaid and copies of respondent's business records from January 1, 2007, through July 18, 2007.³

II. RESPONSE AND ORDER TO SHOW CAUSE

Respondent has supplemented the record with proof of \$1 million in primary commercial auto liability insurance effective April 13, 2007. Respondent, however, has yet to file the corresponding WMATC Insurance Endorsement.

In addition, respondent has failed to comply with the requirement of Order No. 10,640 that respondent produce copies of its business records, verify it timely ceased operating its vans, and submit confirmation from DC Medicaid. Instead, respondent contends through the statement of its administrator, Fred R. West, Jr., that respondent abandoned the transportation-for-hire market in 2005. Mr. West, however, acknowledges in a supplemental supporting statement that as of March 17, 2007:

(1) respondent was "a Medicaid sponsored intermediate care facility" (ICF);

(2) respondent's vans were being used to "transport the firm's [twelve] consumers to their respective Day Treatment Provider's work sites; on City-wide outings; medical and dental appointments; and court appearances;" and

(3) respondent was being "reimbursed, on a per diem basis, for total residential and habilitation services."

The Commission considered a similar claim in *In re VOCA Corp. of Wash., D.C.*, No. AP-96-14, Order No. 4851 (May 21, 1996). VOCA operated ICFs in the District of Columbia pursuant to agreements with the DC Department of Human Services (DHS). Under the agreements, VOCA was required to furnish a full range of ICF services, including transportation of group home residents "to and from job training locations and work sites, and occasionally . . . on recreational outings."⁴ In return, VOCA received "reimbursement of total program expenses, including those relating to the operation of its vehicles."⁵ On these facts, the Commission found "that VOCA's transportation of group home residents -- as paid for by DHS -- is transportation for hire within the meaning of the Compact."⁶ There is nothing in the record to distinguish the transportation described in the VOCA decision from the transportation respondent admits conducting as of March 17 of this year.

³ See *In re Special People Transportation, LLC*, No. MP-06-103, Order No. 9849 (Aug. 18, 2006) (requiring records and Medicaid corroboration).

⁴ Order No. 4851 at 2.

⁵ *Id.* at 2.

⁶ *Id.* at 3.

III. ORDER TO SHOW CAUSE

A person who knowingly and willfully violates a provision of the Compact, or a rule, regulation, requirement, or order issued under it, or a term or condition of a certificate shall be subject to a civil forfeiture of not more than \$1,000 for the first violation and not more than \$5,000 for any subsequent violation.⁷ Each day of the violation constitutes a separate violation.⁸ The Commission may suspend or revoke all or part of any certificate of authority for willful failure to comply with a provision of the Compact, an order, rule, or regulation of the Commission, or a term, condition, or limitation of the certificate.⁹

Considering that respondent has not denied operating its vans on and after April 13, 2007, under its ICF contract, and considering that respondent has failed to produce copies of its business records and has failed to submit any statement from DC Medicaid, respondent shall have thirty days to show cause why the Commission should not assess a civil forfeiture against respondent, and/or revoke Certificate No. 510, for knowingly and willfully violating Article XI, Section 6(a), of the Compact, Regulation No. 58, and the orders issued in this proceeding by conducting operations under an invalid/suspended certificate of authority and failing to produce required documents.¹⁰

THEREFORE, IT IS ORDERED:

1. That respondent shall have thirty days to show cause why the Commission should not assess a civil forfeiture against respondent for knowingly and willfully violating Article XI, Section 6(a), of the Compact, Regulation No. 58, and the orders issued in this proceeding.
2. That respondent shall have thirty days to show cause why the Commission should not revoke Certificate No. 510 for respondent's willful failure to comply with Article XI, Section 6(a), of the Compact, Regulation No. 58, and the orders issued in this proceeding.
3. That respondent may submit within 15 days from the date of this order a written request for oral hearing, specifying the grounds for the request, describing the evidence to be adduced and explaining why such evidence cannot be adduced without an oral hearing.

BY DIRECTION OF THE COMMISSION; COMMISSIONERS YATES AND CHRISTIE:



William S. Morrow, Jr.
Executive Director

⁷ Compact, tit. II, art. XIII, § 6(f)(i).

⁸ Compact, tit. II, art. XIII, § 6(f)(ii).

⁹ Compact, tit. II, art. XI, § 10(c).

¹⁰ See Order No. 9849 (carrier that failed to verify and corroborate required to show cause).