WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

SILVER SPRING, MARYLAND

ORDER NO. 12,454

IN THE MATTER OF: Served June 23, 2010

C.P.R. MEDICAL TRANSPORTATION LLC, WMATC No. 1551, Investigation of Violation of Article XI, Section 14 and Article XII, Section 3 of the Compact, Regulation Nos. 55, 58, 61, 62, and Improperly Registered Vehicles) Case No. MP-2010-053

This investigation is being initiated to determine whether respondent, C.P.R. Medical Transportation LLC, WMATC No. 1551, (C.P.R.) knowingly and willfully violated provisions of the Compact and regulations regarding tariffs, vehicle leases, vehicle markings, and consolidations among carriers. It is also being initiated to determine whether C.P.R. is in compliance with insurance filing requirements and local vehicle registration laws.

I. BACKGROUND

C.P.R. was issued Certificate of Authority No. 1551 on March 13, 2009. It is one of 24 WMATC licensed carriers that transport eligible recipients of the D.C. Medicaid program under an agreement with Medical Transportation Management, Inc. (MTM). C.P.R. has a valid general tariff on file for trips originating in Montgomery County, Crystal City, and Arlington, but has not filed a contract tariff covering the service C.P.R. provides under its agreement with MTM.

According to C.P.R.'s 2010 annual report, C.P.R. utilizes 25 revenue vehicles in WMATC operations. Records obtained from the Maryland Motor Vehicle Administration (MVA) indicate three of these vehicles are registered to C.P.R. The remaining 22 vehicles are registered to other entities. The registered owners of vehicles reported by C.P.R. include a company which has had its WMATC Certificate of Authority revoked and a company which has twice applied for and been denied a WMATC Certificate for failure to establish compliance fitness.

US Transcare is the registered owner of one vehicle reported by C.P.R. US Transcare Inc. held WMATC Certificate from 2005 until 2007, when it was revoked in part for that company's failure to furnish evidence that it ceased operating during a 54 day period when it lacked insurance coverage.[1]

[1] *In re US Transcare Inc.*, No. MP-06-153, Order No. 10,516 (June 1, 2007).

Care Transport Inc. is the registered owner of four vehicles reported by C.P.R. Care Transport Inc. applied for a WMATC Certificate in 2008 and again in 2009, but the Commission denied both applications for failure to establish regulatory compliance fitness.[2]

Two vehicles on C.P.R.'s list are registered in the name of Kirti Vindray Mehta and a separate vehicle is registered in the name of US Transcare Kirti. Mr. Mehta signed C.P.R.'s 2010 annual report on behalf of C.P.R., listing himself as president.

Nine vehicles reported by C.P.R. are registered in the name of Adem H Adem DBA Care Transport. Adem H Adem serves as the East Coast President of MV Transportation, Inc., WMATC Carrier No. 764, which operates approximately 350 vehicles within the Metropolitan District.

Beltway Metro is the registered owner of four vehicles listed on C.P.R.'s annual report. In 2007, Beltway Metro, LLC, acquired Certificate No. 1163 from Majad Al-Karim, trading as Beltway Metro. In 2009, Beltway Metro, LLC, was suspended for failure to maintain proof of insurance on file with the Commission, and Certificate No. 1163 was later terminated at Beltway's request.[3]

Although a WMATC carrier may operate vehicles owned by others, it must first file a lease with the Commission as required by Regulation No. 62. Of the 22 vehicles listed on C.P.R.'s 2010 annual report owned by a second party, only one vehicle is covered by a lease on file with the Commission, a 2004 Toyota Sienna registered to Ravi Gogna.

All 25 vehicles reported by C.P.R. were listed on a vehicle schedule obtained from C.P.R.'s insurance company. However, Maryland MVA registration records indicate three of those vehicles are covered by second insurance policies, raising questions about whether C.P.R. is in fact responsible for operation of those vehicles. Also, the vehicle schedule obtained from C.P.R.'s insurance company includes two other vehicles, not reported to the Commission, that Maryland MVA records show are covered under second insurance policies.

Eight of the 25 vehicles reported by C.P.R. are not registered for hire, which is required by local vehicle registration laws.

Furthermore, on April 16, 2010, Commission staff witnessed a vehicle with magnetic signs displaying C.P.R.'s name. Commission Regulation No. 61-03 specifies that carrier identification markings must be permanently displayed on vehicles operated pursuant to a certificate of authority.

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[2] *In re Care Transport Inc.*, No. AP-09-016, Order No. 11,975 (May 8, 2009); *In re Care Transport Inc.*, No. AP-08-068, Order No. 11,551 (Sept. 4, 2008).

[3] *In re Beltway Metro, LLC*, No. AP-09-55, Order No. 12,017 (June 2, 2009).

II. COMMISSION POWERS

The Commission may investigate on its own motion a fact, condition, practice, or matter to determine whether a person has violated or will violate a provision of the Compact or a rule, regulation, or order.[4] For the purpose of an investigation or other proceeding under the Compact, the Commission may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of books, papers, correspondence, memoranda, contracts, agreements, or other records or evidence which the Commission considers relevant to the inquiry.[5] The Commission shall have access at all times to the accounts, records, memoranda, lands, buildings, and equipment of any carrier for inspection purposes.[6]

If the Commission finds that a respondent has violated a provision of the Compact or any requirement established under it, the Commission shall issue an order compelling compliance and effecting other just and reasonable relief.[7]

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.[8] Each day of the violation constitutes a separate violation.[9]

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.[10]

The term “knowingly” means with perception of the underlying facts, not that such facts establish a violation.[11] The term “willfully” does not mean with evil purpose or criminal intent; rather, it describes conduct marked by careless disregard whether or not one has the right so to act.[12]

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[4] Compact, tit. II, art. XIII, § 1(c).

[5] Compact, tit. II, art. XIII, § 1(e).

[6] Compact, tit. II, art. XII, § 1(b).

[7] Compact, tit. II, art. XIII, § 1(d).

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

[9] Compact, tit. II, art. XIII, § 6(f)(ii).

[10] Compact, tit. II, art. XI, § 10(c).

[11] *In re Paramed Medical Transp., Inc.*, No. MP-02-50, Order No. 6799 (Sept. 3, 2002).

[12] *Id.*

Grounds exist for initiating an investigation of C.P.R.'s compliance with the Compact and the Commission's Rules and Regulations. The Commission will initiate an investigation to determine whether C.P.R. knowingly and willfully violated Article XI, Section 14 of the Compact and Regulation No. 55 (tariffs), Regulation No. 62 (vehicle leases), Regulation No. 61 (vehicle markings), and Article XII, Section 3 of the Compact (consolidations, mergers, and acquisitions of control among carriers). This investigation is also being initiated to determine whether C.P.R. is in compliance with Regulation No. 58 (insurance), and local vehicle registration laws.

III. TARIFF

In 2007 MTM assumed responsibility for managing the District of Columbia Medicaid (DC Medicaid) transportation program on behalf of the District of Columbia Department of Health. MTM does not directly provide transportation but manages scheduling, invoicing, and other administrative functions. MTM relies on existing WMATC certificated carriers to furnish the transportation.

According to a list obtained from MTM on April 5, 2010, C.P.R. is one of 24 WMATC certificated carriers that currently provide transportation pursuant to the DC Medicaid transportation program on behalf of MTM.

Under Title II, of the Compact, Article XI, Section 14(c), "A carrier may not charge a rate or fare for transportation subject to [the Compact] other than the applicable rate or fare specified in a tariff filed by the carrier under [the Compact] and in effect at the time."[13] Under Regulation No. 55, a carrier must file a general tariff if it offers standardized service at universally applicable rates.[14] A carrier must file a contract tariff if it offers tailored service on a continuing basis at negotiated rates.[15]

C.P.R. has a valid general tariff on file, but that tariff does not contain rates for any transportation originating within the District of Columbia.

C.P.R. has not filed an acceptable contract tariff covering the service it provides under its agreement with MTM. C.P.R. will have 30 days to file an acceptable contract tariff or show cause why a civil forfeiture should not be assessed and/or why its certificate of authority should not be suspended or revoked for willful failure to

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[13] *See also* Commission Regulation No. 55-02 ("[n]o carrier shall demand, receive, or collect any compensation for any transportation or transportation-related service, except such compensation as is specified in its currently effective tariff for the transportation or transportation-related service provided.")

[14] *In re Transcom, Inc.*, No. MP-09-034, Order No. 11,865 (Feb. 27, 2009) (citing Regulation No. 55-07; *In re Washington, D.C. Jitney Ass'n, Inc.*, No. AP-95-26, Order No. 4795 at 4 (Mar. 15, 1996)).

[15] Order No. 11,865 (citing Regulation No. 55-08; Order No. 4795 at 4).

comply with Article XI, Section 14, of the Compact and Commission Regulation No. 55.[16]

[16] *See In re Battle's Transp., Inc.*, No. MP-08-085, Order No. 11,310 (Apr. 25, 2008)(carriers transporting passengers on behalf of MTM given 30 days to file contract tariff or show cause why civil forfeiture should not be assessed or certificate revoked).

IV. VEHICLE LEASES

Only one of the 22 vehicles reported by C.P.R. that are owned by a second party is covered by a lease on file with the Commission.

Regulation No. 62-02 provides in part:

> No carrier subject to the jurisdiction of this Commission may charter, rent, borrow, lease, or otherwise operate in revenue service any motor vehicle to which such carrier does not hold title, except in accordance with this regulation. No carrier subject to the jurisdiction of this Commission shall operate any motor vehicle(s) as lessee thereof unless the contract of lease has been approved by the Commission.

WMATC cited several purposes when it first adopted a lease regulation in 1979. Among these reasons were to assure clear identification of the carrier to the public and to the users of the service, clearly identify responsibility for an operation, and prevent circumvention of the Compact through rental of operating rights, which is specifically prohibited by the Compact.[17]

C.P.R. will have thirty days to file acceptable leases in accordance with Commission Regulation No. 62 or show cause why a civil forfeiture should not be assessed and/or why its certificate of authority should not be suspended or revoked for willful failure to comply with Commission Regulation No. 62.

According to the terms of the sole lease on file covering a vehicle reported by C.P.R. on its 2010 annual report, C.P.R. pays $100 per day to lease a 2004 Toyota Sienna registered to Ravi Gogna. This amounts to approximately $3000 per month to lease a six year old minivan, which is substantially above market rates. Accordingly, we wish to expressly draw attention to Regulation No. 62-08, which provides that subject to an exception not relevant here, “the lease of a vehicle with a driver provided by the same lessor is prohibited.” Under this regulation, a lessor is deemed to include the lessor’s employees, persons in a control relationship with the lessor, and persons in a contractual relationship with the lessor.

Regulation No. 62-08 is designed to prevent carriers without WMATC authority from operating in the Metropolitan District through the guise of a so-called lease arrangement.[18] It reflects the

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[17] *In re Proposed Reg. Relating to Leases of Equip.*, No. 388, Order No. 2011 at 8 (July 24, 1979).

[18] *In re Veolia Transp. On Demand, Inc.*, No. AP-07-006, Order No. 11,862 at 2 (Feb. 24, 2009); *In re Orbital Shuttle, Inc.*, No. AP-99-60, Order No. 5736 (Nov. 2, 1999).

rebuttable presumption that an entity which furnishes both a vehicle and a driver under a lease agreement is actually a passenger carrier.[19]

V. FOR HIRE VEHICLE REGISTRATIONS

The Compact contemplates carrier compliance with basic vehicle registration laws.[20] Eight of C.P.R.'s 25 reported vehicles are not registered in classes that are identified as for hire vehicles by the Maryland Motor Vehicle Administration. In addition, two other vehicles on a vehicle schedule obtained from C.P.R.'s insurer are not registered for hire. C.P.R. will have thirty days to present copies of current for hire registration cards for each revenue vehicle in its fleet, or show cause why such vehicles shall not be ordered out of service.

The vehicles at issue are as follows:

VIN No.	Year	Make	Plate	State	Capacity	Registered Owner
1FTNS24W09DA88628	2009	Ford	50151M2	MD	4	CPR Medical Transportation LLC
1FAHP3FN5AW154761	2010	Ford	6FMT73	MD	5	CPR Medical Transportation LLC
2FMZA576X6BA58284	2006	Ford	685M238	MD	7	US Transcare Kirti
3FAHP06Z98R125956	2008	Ford	8DSD62	MD	5	Beltway Metro
JTDBR32E030042696	2003	Toyota	MZP987	MD	5	Kirti Vindray Mehta
STD2K23C38S186497	2008	Toyota	50151M1	MD	4	CPR Medical Transportation LLC
2FAFP71W4YX188154	2000	Ford	IXED48	MD	5	Care Transport Inc
1FBSS31L56HA13029	2006	Ford	76452HV	MD	4	US Transcare Inc.
2FMGK5CC5ABA71623	2010	Ford	56412M0	MD		CPR Medical Transportation
2C4GP44322R757951	2002	Chrysler	8FKN45	MD		Francis S Nicholas

VI. INSURANCE

C.P.R. has a valid WMATC Certificate of Insurance and Policy Endorsement on file with the Commission, as required by Regulation No. 58. The underlying policy was issued by Zurich American Insurance Company. All C.P.R.'s reported vehicles were listed on a vehicle schedule obtained from Zurich. However, according to Maryland MVA records, three of these vehicles are covered under second insurance

[19] Order No. 11,862; Order No. 5736.

[20] *In re Community Multi-Services, Inc.*, No. MP-10-008, Order No. 12,342 (Mar. 25, 2010).

policies. Maryland MVA records indicate two additional vehicles insured by C.P.R. under its Zurich policy, but not reported to the Commission, are also covered by second insurance policies.

Normally, the WMATC Insurance Endorsement acts as a backstop since it provides coverage even in the event a vehicle is not identified in the policy, but the Endorsement is of little value if a claimant is not given accurate policy information.[21] Thus, until respondent cancels duplicative policies, the public remains at risk.[22]

To illustrate this point, we note there is no assurance that the second policies cover claims up to $1.5 million per incident, as the Zurich policy does in accordance with Commission Regulation No. 58-02(c)(ii). An injured person could pursue a claim that exceeds the coverage limits of the second policy, unaware that additional coverage is available under the Zurich policy.

To take another example, if a second (duplicative) policy is canceled, a person subsequently injured in or by a vehicle that had been covered by two policies is at risk of being informed that no coverage is available due to the second policy's cancellation, even though coverage would still be available under Zurich's WMATC Insurance Endorsement.

The Commission noted these concerns when it amended Regulation No. 58-02 to provide that "not more than one policy may be obtained for any one tier or layer" of coverage.[23]Under Regulation No. 58-09, the Commission may, upon 30 days' notice, revoke its approval of any WMATC Insurance Endorsement if, in the judgment of the Commission, such security does not comply with the Commission's regulations or for any reason fails to provide satisfactory or adequate protection for the public.

The Commission has revoked the WMATC Insurance Endorsements of other carriers in the past under similar circumstances.[24] Accordingly, we will revoke respondent's WMATC Insurance Endorsement, effective 30 days from the date of this order. Respondent shall timely file a replacement WMATC Insurance Endorsement(s) for one policy and shall have 30 days to file proof that any duplicative policies have been canceled.

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[21] *In re E-Z Med. Wheels, Inc.*, No. MP-03-110, Order No. 7461 (Oct. 10, 2003).

[22] *Id.*

[23] *See In re Rulemaking to Amend Rules of Practice and Procedure and Regulations: Regulation No. 58*, No. MP-2008-017, Order No. 11,077 at 7 (Jan. 14, 2008) (proposing amendments), *adopted as proposed*, Order No. 11,254 (Apr. 2, 2008).

[24] *In re Americare Medical Transport, Inc.*, No. MP-05-37, Order No. 8621 (Apr. 1, 2008).

The vehicles and policies at issue are as follows:

VIN No.	Year	Make	Plate	State	Registered Owner	2nd Ins. Co.
1FAHP3FN5AW154761	2010	Ford	6FMT73	MD	CPR Medical Transp. LLC	Empire Fire & Marine
2FMZA576X6BA58284	2006	Ford	685M238	MD	US Transcare Kirti	Empire Fire & Marine
1FBSS31L78DA24026	2008	Ford	44155B	MD	Adem H Adem DBA Care Transp.	United States Fire
2FMGK5CC5ABA71623	2010	Ford	56412M0	MD	CPR Medical Transportation	Empire Fire & Marine
2C4GP44322R757951	2002	Chrys.	8FKN45	MD	Francis S Nicholas	Seminole Casualty

VII. CONSOLIDATIONS, MERGERS, AND ACQUISITIONS OF CONTROL

Nine of the vehicles reported by C.P.R. are registered in the name of Adem H Adem DBA Care Transport. According to records on file with the Commission, Mr. Adem serves as East Group President of MV Transportation, Inc., (MV), WMATC Carrier No. 764. In 2008 Mr. Adem signed a statement on behalf of MV in support of Care Transport Inc.'s application for a certificate of authority and for temporary operating authority in Case Nos. AP-2008-068 and AP-2008-069. Those applications were denied because the Care Transport Inc. did not respond to evidence it had begun performing passenger transportation in the Metropolitan District under contract with MTM notwithstanding the lack of WMATC operating authority.[25]

Mr. Adem's relationships with MV, Care Transport Inc., and C.P.R. raise the possibility that a consolidation, merger, or acquisition of control among carriers operating within the Metropolitan District may have taken place without the requisite Commission approval.

Under Title II of the Compact, Article XII, § 3(a): A carrier or any person controlling, controlled by, or under common control with a carrier shall obtain Commission approval to

> (i) consolidate or merge any part of the ownership, management, or operation of its property or franchise with a carrier that operates in the Metropolitan District;
> (ii) purchase, lease, or contract to operate a substantial part of the property or franchise of another carrier that operates in the Metropolitan District; or

[25] Order No. 11,551.

(iii) acquire control of another carrier that operates in the Metropolitan District through ownership of its stock or other means.

In order to determine whether an unlawful consolidation has occurred, C.P.R. shall be directed to file within 30 days a current list of C.P.R.'s officers, directors, and shareholders, along with a current mailing address and telephone number for each. C.P.R. will also be directed to file a statement describing its business relationship with Mr. Adem.

VIII. VEHICLE MARKINGS

On April 16, 2010, Commission staff witnessed a vehicle displaying removable magnetic signs with C.P.R.'s name. Regulation No. 61-03 provides:

> The [carrier identification markings] required by this regulation must be permanent, except that vehicles operated under temporary authority or approval and vehicles leased for not more than thirty days in any calendar year may be marked with the use of removable displays that otherwise meet the requirements of this regulation.

The markings required by Regulation No. 61 help assign responsibility, and facilitate recovery of compensation, for damage and injuries caused by carriers operating under WMATC authority.[26]

The potential for abuse with removable carrier identification markings is obvious. By temporarily adding or removing a sign, WMATC carriers could swap vehicles between their fleets, blurring the operations of the carriers and rendering unclear which party bears responsibility in the event of an incident. Furthermore, unauthorized companies could temporarily add such a sign to pose as a legitimate, properly licensed and insured carrier. Finally, a WMATC licensed carrier could temporarily add a vehicle to its fleet without ensuring that it is properly registered, insured, and has undergone a safety inspection, and the evidence of such acts would disappear with removal of the temporary sign.

To ensure its vehicles are in compliance with Regulation No. 61, C.P.R. shall be directed to present each of its WMATC vehicles for inspection by Commission staff within 30 days. C.P.R. also will be directed to surrender all removable displays.

IX. ORDER TO PRODUCE DOCUMENTS

C.P.R. will be directed to produce within 30 days copies of its business records from December 1, 2009, to the date of this order.

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[26] *In re Community Multi-Services, Inc.*, No. MP-10-08, Order No. 12,301 (Feb. 2, 2010).

THEREFORE, IT IS ORDERED:

1. That an investigation of respondent's operations in the Washington Metropolitan Area Transit District is hereby initiated under Article XIII, Section 1, of the Compact.

2. That within 30 days respondent shall file an acceptable contract tariff for service performed under agreement with Medical Transportation Management, Inc., or show cause why the Commission should not assess a civil forfeiture, and/or suspend or revoke respondent's certificate of authority, for knowingly and willfully violating Article XI, Section 14, of the Compact and Regulation No. 55.

3. That respondent shall file within 30 days acceptable vehicle leases in accordance with Commission Regulation No. 62, or show cause why a civil forfeiture should not be assessed and/or why its certificate of authority should not be suspended or revoked for willful failure to comply with Commission Regulation No. 62.

4. That respondent may file within 15 days from the date of this order a request for oral hearing limited in scope to issues presented by paragraphs two and three (tariff and lease filing requirements), specifying the grounds for the request, describing the evidence to be adduced and explaining why such evidence cannot be adduced without an oral hearing.

5. That respondent is hereby directed to submit within 30 days a list of its current vehicles, and copies of the registration cards and safety inspection certificates for those vehicles.

6. That respondent shall have 30 days to show cause why any revenue vehicle not registered for hire shall not be ordered out of service.

7. That respondent is hereby directed to present all of its revenue vehicles for inspection by Commission staff within 30 days.

8. That respondent's $2 million primary WMATC Insurance Endorsement from Zurich American Insurance Company is hereby revoked, effective 30 days from the date of this order.

9. That Certificate No. 1551 shall be automatically suspended under Regulation No. 58-02, and subject to revocation pursuant to Article XI, Section 10(c), of the Compact, if respondent fails to timely file the necessary replacement WMATC Insurance Endorsement(s).

10. That respondent shall file within 30 days proof that the auto liability policy underlying respondent's WMATC Insurance Endorsement has been reported to the Maryland MVA for all vehicles in respondent's fleet and proof of cancellation of all duplicative auto liability insurance policies.

11. That respondent shall file within 30 days a current list of respondent's officers, directors, and shareholders, along with a current mailing address and telephone number for each.

12. That respondent shall file within 30 days a statement detailing its business relationship with Adem H Adem.

13. That respondent shall surrender within 30 days all removable vehicle displays.

14. That within thirty days from the date of this order, respondent shall produce any and all books, papers, correspondence, memoranda, contracts, agreements, and other records and documents, including any and all stored electronically, that are within respondent's possession, custody or control and which relate to the transportation of passengers for hire between points in the Metropolitan District during the period beginning December 1, 2009, and ending on the date of this order, including, but not limited to any and all:

a. corporate by-laws, resolutions, and meeting minutes

b. customer contracts and invoices;

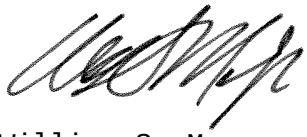
c. calendars and itineraries;

d. bank and credit card statements; and

e. income tax and personal property returns

15. That Certificate of Authority No. 1551 shall be subject to suspension and/or revocation upon respondent's failure to timely comply with the requirements of this order.

BY DIRECTION OF THE COMMISSION; COMMISSIONERS BRENNER AND CHRISTIE:



William S. Morrow, Jr.
Executive Director