

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 07G-515CP
Civil Penalty Assessment Notice No. 85575

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STIPULATION AND SETTLEMENT AGREEMENT

COLORADO PUBLIC UTILITIES COMMISSION,

Complainant,

v.

ERNEST PAUL PHILIPS, JR.,
Respondent.



Staff of the Colorado Public Utilities Commission (“Staff”) and Respondent Ernest Paul Phillips, Jr. (“Respondent”) (collectively “Parties”) enter into this Stipulation and Settlement Agreement (“Agreement”) in the above-referenced docket as a complete and final resolution of all issues.

Background

1. On December 19, 2007, Staff issued Respondent Civil Penalty Assessment Notice No. 85575 (the “CPAN”) seeking civil penalties of \$2,500 (or \$1250 if paid within 10 days). The CPAN alleged Respondent made a fraudulent or intentionally false statement, entry or reproduction of a medical certificate, in violation of 49 *Code of Federal Regulation* (“CFR”) Section 390.35 and 4 *Code of Colorado Regulations* (“CCR”) 723-6-6102(a)(I).
2. On January 22, 2008, the undersigned counsel for Staff entered her appearance on behalf of Staff.
3. This matter has not yet been set for hearing.

4. The Agreement herein has been reached in the spirit of compromise and in light of the uncertainties of trial. The Agreement has also been reached to avoid the costly expense of litigation. The Parties note that the Agreement promotes administrative efficiency by avoiding the time and expense that would be necessarily devoted to hearing this matter. Lastly, the Parties acknowledge that this Agreement will not have precedential effect on any other Commission matters. *See Colorado Ute Elec. Ass'n, Inc. v. PUC*, 602 P.2d 861, 865 (Colo. 1979); *B & M Serv., Inc. v. PUC*, 429 P.2d 293, 296 (Colo. 1967).

5. The Parties submit the public interest is served by assessing Respondent a reduced civil penalty of \$1000 under the terms herein. In reducing the penalty, the Parties considered the following mitigating factors:

- a. Respondent acknowledged wrongdoing and immediately took corrective action within a reasonable period of time by obtaining a valid medical examiner's certificate.
- b. Respondent is a first time offender.
- c. Respondent represents he does not have the ability to pay the entire civil penalty.
- d. Staff is satisfied that assessing Respondent a reduced civil penalty of \$1000 under the terms herein is sufficient to motivate Respondent to remain compliant with the Public Utilities Laws and Commission Rules on a going-forward basis.

Settlement Agreement

6. Staff and Respondents hereby stipulate and agree as follows:
 - a. Respondent admits liability to the one violation 49 CFR Section 390.35 and 4 CCR 723-6-6102(a)(I), as cited in the CPAN.
 - b. In consideration of Respondent's admission of liability in subparagraph 6(a), and for the reasons expressed in paragraphs 4 and 5, Staff agrees to reduce the amount of the civil penalty from \$2500 to \$1000.

- c. Respondent agrees to pay \$1000 to the Colorado Public Utilities Commission in four (4) installments as follows: \$250 within ten (10) days after the Commission's approval of this Agreement becomes final and every thirty (30) days thereafter until paid in full.
- d. The foregoing lesser civil penalty is conditional so long as (1) payment is timely received by the Commission and (2) Respondent is not found to violate any Public Utilities Law in Title 40 of the Colorado Revised Statutes or Commission rule relating to making a fraudulent or intentionally false statement, entry or reproduction of a medical certificate in a formal hearing on the merits of an alleged violation before the Commission within two (2) years of the effective date of the Commission Order approving this Agreement. Accordingly, the Parties agree to impose and suspend the remainder of the unpaid amount of \$1500 sought in the CPAN until such time these conditions are met (if at all). This liability shall be in addition to any other civil or criminal liability that may arise from such violation(s).

7. In the event this Agreement is modified or not approved in its entirety, either Staff or Respondent, at that party's option, may withdraw from this Agreement by filing a notice with the Commission in this docket within seven (7) days of entry of such Order. In that event, this docket shall be set for hearing.

EXECUTED this ____ day of April 2008.

STAFF OF THE COLORADO
PUBLIC UTILITIES COMMISSION

Approved as to form:

JOHN W. SUTHERS, ATTORNEY GENERAL

By: 
Robert Laws

By: 
Anne K. Botterud, #20726*
First Assistant Attorney General

1560 Broadway Suite 250
Denver, Colorado 80202

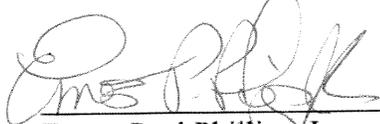
Senior Criminal Investigator
Colorado Public Utilities Commission

Business and Licensing Section
1525 Sherman Street, 5th Floor
Denver, Colorado 80203
Telephone: (303) 866-3867
Facsimile: (303) 866-5395
anne.botterud@state.co.us

**COUNSEL FOR STAFF OF THE
PUBLIC UTILITIES COMMISSION**

*Counsel of Record

ERNEST PAUL PHILLIPS, JR.


Ernest Paul Phillips, Jr.