

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 19V-0435TNC

IN THE MATTER OF THE PETITION OF AIMEN BABIKIR ELTURABI FOR A WAIVER OF RULE 6713(C) (PROOF OF MEDICAL FITNESS) OF THE RULES REGULATING TRANSPORTATION BY MOTOR VEHICLE, 4 CCR 723-6.

**INTERIM DECISION OF
ADMINISTRATIVE LAW JUDGE
G. HARRIS ADAMS
ORDERING PETITIONER TO SHOW CAUSE**

Mailed Date: September 5, 2019

I. STATEMENT

1. On August 6, 2019, Aimen Babikir Elturabi (Petitioner) filed a verified Petition for Waiver/Variance of Safety Regulations – TNC Driver (Form PFW-TNC-1, Revised 5/15/2019) (Petition). Petitioner requests a waiver of the specific subparagraph(s) of Rule 6713(c) of the Transportation Network Company: “(II) – Diabetes mellitus currently requiring insulin for control.” Petition at 1. In support, Petitioner filed a Medical Examination Report Form (Form MCSA-5875), a Medical Examiner’s Certificate (Form MCSA-5876), and a Colorado driver’s license.

2. The Petition states:

THIS PETITION INCLUDES THE FOLLOWING ADDITIONAL INFORMATION:

1. The Medical Examiner's Certificate, signed by the medical examiner.
2. A copy of all of the completed pages of the TNC Medical Examination Report.
3. A copy of the my Colorado Driver's Record from the Colorado Department of Motor Vehicles (which can be obtained online at www.colorado.gov/dmv/motor-vehicle-record) and a Driver Record for

the past three years in any other state that I was issued a Driver's License (if any).

4. A copy of my current Driver's License.

Petition at 2.

Petitioner failed to provide the information stated to have been included.

3. The filed Medical Examiner's Certificate states "I find this person is qualified...only when...[a]ccompanied by a Diabetes waiver." Medical Examiner's Certificate at 1.

4. Petitioner filed the most recent form petition available from the Commission for the purpose of requesting a waiver relating to medical qualification. See Petition form "Revised 5/15/2019." However, the "Medical Examiner's Certificate" filed with the petition corresponds to a different version of medical examination (*i.e.* the Motor Carrier Safety Administration). While it is not fatal to use different versions, a substantive gap was created in this proceeding based upon differences in the versions.

5. Previous Commission form petitions required:

a signed and dated letter from a medical professional/doctor, at a minimum, containing:

- a) a description of the medical condition requiring the waiver; and
- b) a statement that, in the medical professional/doctor's medical opinion, the driver could safely operate the type of motor vehicle(s) that the driver intends to operate.

6. The Commission's petition form (PFW-TNC-1, revised as of May 15, 2019), no longer requires a separate letter expressing an opinion by a qualified medical professional because the Version Date 5/15/2019 form now incorporates that opinion in the most recent version of the "Colorado TNC Driver- Medical Examiner's Certificate" (Version Date May 15, 2018).

7. Petitioner is largely free to select the manner of presenting his case and is not bound to use Commission-provided forms. However, the Medical Examiner's Certificate filed with the petition certifies that the person is medically fit to drive only if accompanied by a specified waiver. There is no qualified medical opinion expressed whatsoever in support of the requested relief as to Petitioner's ability to safely operate a motor vehicle of the type the driver intends to operate while driving for a transportation network company.

8. Petitioner also failed to file a copy of his Colorado Driver's Record from the Colorado Department of Motor Vehicles and a Driver Record for the past three years in any other state that he was issued a Driver's License (if any).

9. On or before **close of business on September 20, 2019**, Petitioner will be ordered to:

- a) supplement the petition by filing the Version Date 5/15/2018 form of the "Colorado TNC Driver- Medical Examiner's Certificate" (available at the Commission's website);¹ **OR**
- b) supplement the petition by filing a signed and dated letter expressing a qualified medical opinion as to whether he/she feels the driver could safely operate a motor vehicle of the type the driver intends to operate while driving for a transportation network company coupled with a short description of the reason for the physical disqualification; **OR**
- c) otherwise show cause why this matter should not be dismissed without prejudice.

10. If Petitioner demonstrates cause that the matter should not be dismissed because a medical opinion will be provided through oral testimony at hearing (*i.e.*, rather than through a new certificate or signed and dated letter), he must identify the medical professional that will be testifying at hearing to express a qualified expert opinion on whether he/she feels the driver

¹ <https://www.colorado.gov/pacific/dora/tnc>

could safely operate a motor vehicle of the type the driver intends to operate while driving for a transportation network company.

11. On or before **close of business on September 20, 2019**, Petitioner will be ordered to supplement the petition by filing a copy of the my Colorado Driver's Record form from the Colorado Department of Motor Vehicles (which can be obtained online at www.colorado.gov/dmv/motor-vehicle-record) and a Driver Record for the past three years in any other state that he was issued a Driver's License (if any).

12. **Petitioner is advised that failure to make one of the filings described above on or before September 20, 2019, will result in dismissal of the petition without prejudice.**

II. ORDER

A. It Is Ordered That:

1. Aimen Babikir Elturabi (Petitioner) must supplement the Petition for Waiver/Variance of Safety Regulations – TNC Driver to cure the deficiency in the petition **or** show cause why this matter should not be dismissed without prejudice (*e.g.*, it may be then be refiled later) on or before **close of business on September 20, 2019**.

2. If any demonstration of cause regarding a medical condition is anticipated to be demonstrated during a hearing, Petitioner must identify any medical examiner that will testify at hearing to express a qualified expert opinion, as specified above.

3. This Decision is effective immediately.

(S E A L)



THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

G. HARRIS ADAMS

Administrative Law Judge

ATTEST: A TRUE COPY

A handwritten signature in cursive script that reads "Doug Dean".

Doug Dean,
Director