

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 14A-1004BP

IN THE MATTER OF THE APPLICATION OF TM MEDICAL TRANSPORTATION LLC
FOR A PERMIT TO OPERATE AS A CONTRACT CARRIER BY MOTOR VEHICLE
FOR HIRE.

**INTERIM DECISION OF
ADMINISTRATIVE LAW JUDGE
MANA L. JENNINGS-FADER
PERMITTING APPLICANT TO PROCEED
WITHOUT LEGAL COUNSEL, REQUIRING
APPLICANT TO MAKE FILING, VACATING
PROCEDURAL SCHEDULE, NOTIFYING PARTIES
THAT APPLICATION HAS BEEN DEEMED
COMPLETE, AND CONTAINING ADVISEMENTS**

Mailed Date: November 25, 2014

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I. STATEMENT

1. On October 6, 2014, TM Medical Transportation LLC (TM Medical or Applicant) filed an Application for New Permanent Authority to Operate as a Contract Carrier of Passengers

by Motor Vehicle for Hire. Attached to the filing are several documents. That filing commenced this Proceeding.

2. On October 15, 2014, Applicant filed an amendment to the October 6, 2014 filing. On October 17, 2014, Applicant filed a supplement to the October 6, 2014 filing. Unless the context indicates otherwise, reference in this Interim Decision to the Application is the October 6, 2014 filing as amended on October 15, 2014 and supplemented on October 17, 2014.

3. On October 20, 2014, the Commission issued its Notice of Application Filed (Notice) in this Proceeding (Notice at 2); established an intervention period; and established a procedural schedule. This Interim Decision will vacate the procedural schedule.

4. On October 31, 2014, MKBS, LLC, doing business as Metro Taxi (Metro), timely filed (in one document) its Entry of Appearance and Intervention by Right in Opposition to the Permanent Authority Application or Alternative Motion to Permissively Intervene.¹ By that filing, Metro is an intervenor by right and, thus, a party in this Proceeding. Metro opposes the Application and is represented by legal counsel in this matter.

5. The intervention period has expired. No other person has filed an intervention of right or a motion for leave to intervene. In addition, as of the date of this Interim Decision, there is no pending motion for leave to intervene out-of-time.

6. Metro is the Intervenor. Applicant and Intervenor, collectively, are the Parties.

7. On November 24, 2014, by Minute Order, the Commission referred this matter to an Administrative Law Judge (ALJ).

¹ On the same date, Metro filed (in two documents) its Preliminary List of Witnesses and its Preliminary List of Exhibits, to which the referenced exhibits were attached.

A. Applicant to Proceed without Legal Counsel.

8. Rule 4 *Code of Colorado Regulations* (CCR) 723-1-1201(a)² requires a party in an adjudication before the Commission to be represented by an attorney except that, pursuant to Rule 4 CCR 723-1-1201(b)(II) and as relevant here, an individual who is not an attorney may represent the interests of a closely-held entity, provided the Commission grants permission.

9. The Commission has held that, unless an exception applies, a party must be represented by legal counsel in an adjudicatory proceeding. In addition, the Commission has held that, if a party does not establish that an exception applies to it, there are two consequences: first, any filing made by a non-attorney on behalf of the party is void and of no legal effect; and second, the party must have an attorney in order to participate in a hearing, a prehearing conference, or an oral argument.

10. This is an adjudication before the Commission.

11. Applicant is a Colorado limited liability company, is a party in this matter, and is not represented by an attorney in this Proceeding.

12. In order to be represented in this matter by an individual who is not an attorney, Applicant must establish that: (a) it is a closely-held entity within the meaning of § 13-1-127(1)(a), C.R.S.; (b) the amount in controversy does not exceed \$ 15,000; and (c) the individual who will represent Applicant has authority to represent Applicant.

13. On October 15, 2014 in its amendment to the Application, Applicant submitted a verified statement concerning self-representation. In its submission, Applicant states: (a) it has

² This Rule is found in the Rules of Practice and Procedure, Part 1 of 4 *Code of Colorado Regulations* 723.

no more than three owners; (b) the amount in controversy in this matter is less than \$ 15,000; and (c) as owner, Mr. Wadhah Almulla is the individual who has authority to represent Applicant.

14. Review of the verified information provided establishes that Applicant is a closely-held entity within the meaning of § 13-1-127(1)(a), C.R.S., as Applicant has three or fewer owners.

15. Review of the verified information provided establishes that the amount in controversy likely is less than \$ 15,000. On this point, the ALJ observes that it is very difficult to place a value on the requested contract carrier permit because, at present, Applicant does not provide transportation service and, as a result, has no financial history.

16. Applicant states that Mr. Wadhah Almulla is its owner and will be its non-lawyer representative in this matter. Review of the verified information provided establishes that Mr. Wadhah Almulla is Applicant's owner; thus, he is presumed to have the authority to appear on behalf of the closely-held entity.

17. Based on the verified information provided and the record in this matter, the ALJ finds that Applicant has met the requirements of Rule 4 CCR 723-1-1201(b)(II). Although he is not an attorney, Mr. Wadhah Almulla may represent Applicant in this matter.

18. Applicant is advised and is on notice that Mr. Wadhah Almulla is the only individual who is not an attorney who is authorized to be TM Medical's representative in this Proceeding.

19. Applicant and Mr. Almulla are advised and are on notice that the non-attorney representative Wadhah Almulla will be bound by, and will be held to, the

same procedural and evidentiary rules and the same substantive law as those that bind and are applicable to licensed attorneys. The Colorado Supreme Court has held that,

[b]y electing to represent himself [in a criminal proceeding,] the defendant subjected himself to the same rules, procedures, and substantive law applicable to a licensed attorney. A pro se defendant cannot legitimately expect the court to deviate from its role of impartial arbiter and [to] accord preferential treatment to a litigant simply because of the exercise of the constitutional right of self-representation.

People v. Romero, 694 P.2d 1256, 1266 (Colo. 1985). This standard applies in civil proceedings. *Negron v. Golder*, 111 P.3d 538, 541 (Colo. App. 2004); *Loomis v. Seely*, 677 P.2d 400, 402 (Colo. App. 1983) (“If a litigant, for whatever reason, presents his own case to the court, he is bound by the same rules of procedure and evidence as bind those who are admitted to practice law before the courts of this state. [Citation omitted.] A judge may not become a surrogate attorney for a *pro se* litigant.”). This standard applies in Commission proceedings.

B. Application Deemed Complete and Time for Commission Decision.

20. On November 24, 2014, by Minute Order, the Commission deemed the Application complete as of that date. When it filed the Application, TM Medical filed neither its supporting testimony and exhibits nor a detailed summary of its direct testimony and copies of its exhibits in support of the Application.

21. Pursuant to § 40-6-109.5(2), C.R.S., and absent an enlargement of time by the Commission³ or Applicant’s waiver of the statutory provision, a Commission decision on the Application should issue not later than 210 days from the date on which the Commission deemed the Application to be complete. The Commission should issue its decision on the Application on or before **June 22, 2015**.

³ Section 40-6-109.5(4), C.R.S., permits the Commission to extend the time for decision an additional 90 days upon a finding of extraordinary conditions.

C. Applicant to Make Filing Regarding Procedural Schedule and Evidentiary Hearing.

22. Intervenor opposes the Application. Thus, it is necessary to establish a procedural schedule and to schedule an evidentiary hearing. In addition, it is necessary to address issues pertaining to discovery and pertaining to the treatment of information claimed to be confidential. To accomplish this, the ALJ will order Applicant to consult with Intervenor and to make, on or before **December 10, 2014**, a filing that: (a) contains a procedural schedule, including hearing date, that is satisfactory to all Parties; and (b) addresses the issues discussed below. The ALJ will order Intervenor to cooperate with Applicant with respect to this filing.

23. The December 10, 2014 filing must contain at least the following procedural schedule dates: (a) the date by which Applicant will file its list of witnesses and complete copies of the exhibits it will offer in its direct case; (b) the date by which Intervenor will file its list of witnesses and complete copies of the exhibits it will offer in its case; (c) the date by which each party will file, but only as necessary to correct errors in the previous filings, a corrected list of witnesses and complete copies of corrected exhibits; (d) the date by which each party will file prehearing motions, including (without limitation) dispositive motions, motions to strike, and motions *in limine*;⁴ (e) the date by which the Parties will file any stipulation or settlement agreement reached;⁵ (f) *three* proposed evidentiary hearing dates;⁶ and (g) a statement as to whether the Parties wish to make closing statements at the conclusion of the evidentiary hearing.

24. In considering proposed hearing dates, the Parties are reminded that, absent an enlargement of time or a waiver of § 40-6-109.5, C.R.S., the Commission decision in this matter

⁴ This date must be not later than ten calendar days before the first day of hearing.

⁵ This date must be not later than three business days before the first day of hearing.

⁶ If possible, the ALJ will choose one of the proposed hearing dates.

should issue not later than June 22, 2015. To allow time for issuance of a recommended decision, filing of exceptions, filing of response to exceptions, and issuance of a Commission decision on exceptions, the **hearing in this matter must be *concluded* not later than March 27, 2015.**

25. Unless modified, Rule 4 CCR 723-1-1405 governs discovery. If the procedures and timeframes contained in Rule 4 CCR 723-1-1405 are not adequate, the December 10, 2014 filing must contain: (a) any modifications or special provisions that the Parties wish the ALJ to order with respect to discovery; and (b) a statement of the Parties' reasons for requesting the modifications or special provisions.

26. Rules 4 CCR 723-1-1100 and 723-1-1101 govern the treatment of information claimed to be confidential. If the procedures and timeframes contained in Rules 4 CCR 723-1-1100 and 723-1-1101 are not adequate, the December 10, 2014 filing must contain: (a) any special provisions that the Parties wish the ALJ to order with respect to the treatment of information claimed to be confidential; and (b) a statement of the Parties' reasons for requesting the special provisions.

27. When the December 10, 2014 filing is received, the ALJ will issue an Interim Decision scheduling the evidentiary hearing and establishing the procedural schedule.

28. **The Parties are advised, and are on notice, that** if Applicant fails to make the December 10, 2014 filing regarding the proposed hearing dates and proposed procedural schedule to which the Parties agree, the ALJ will schedule the evidentiary hearing and will establish the procedural schedule without input from the Parties.

29. **The Parties are advised, and are on notice, that** the testimony in this Proceeding will be presented through oral testimony at the evidentiary hearing. For each witness

(except a witness offered in Applicant's rebuttal case), the following information must be provided: (a) the witness's name; (b) the witness's address; (c) the witness's business or daytime telephone number; and (d) a detailed statement of the testimony that the witness is expected to provide. This information will be provided on the list of witnesses to be filed in accordance with the procedural schedule. No person will be permitted to testify (except in Applicant's rebuttal case) unless that person is identified as required on the list of witnesses.

30. **The Parties are advised, and are on notice, that** complete copies of all exhibits (except an exhibit offered in Applicant's rebuttal case or an exhibit to be used in cross-examination) will be filed in advance of the hearing. The exhibits will be filed in accordance with the procedural schedule. No document will be admitted as an exhibit (except when offered in Applicant's rebuttal case or when used in cross-examination) unless a complete copy of the document is filed in advance of the hearing.

D. Additional Advisements.

31. **The Parties are advised, and are on notice, that** the Parties must be familiar with, and must abide by, the Rules of Practice and Procedure, 4 CCR 723 Part 1. These Rules are available on-line at dora.colorado.gov/puc.

32. **The Parties are advised, and are on notice, that** filing with the Commission occurs on the date that the Commission *receives* a document. Thus, if a document is placed in the mail on the date on which the document is to be filed, the filing is *not* timely.

33. **The Parties are advised that** the Commission has an E-Filings System available. One may learn about, and -- if one chooses to do so -- may register to use, the E-Filings System at dora.colorado.gov/puc.

II. ORDER

A. It Is Ordered That:

1. MKBS, LLC, doing business as Metro Taxi, is a party in this Proceeding.
2. Consistent with the discussion above, Applicant TM Medical Transportation LLC may be represented in this matter by Mr. Wadhah Almulla, who is not an attorney.
3. Consistent with the discussion above, Mr. Wadhah Almulla is bound by and will be held to the same procedures, rules, and substantive law as those applicable to a licensed attorney.
4. The procedural schedule established in the Notice of Application Filed dated October 20, 2014 is vacated.
5. Not later than December 10, 2014, TM Medical Transportation LLC shall make a filing that complies with the requirements of ¶¶ 22-26, above.
6. MKBS, LLC, doing business as Metro Taxi, shall cooperate with TM Medical Transportation LLC in the preparation of the filing required by Ordering Paragraph No. 5.
7. Consistent with the discussion above, if TM Medical Transportation LLC fails to make the filing required by Ordering Paragraph No. 5, the Administrative Law Judge, without input from the Parties, shall schedule the evidentiary hearing and shall establish the procedural schedule.
8. The Parties are held to the advisements in this Interim Decision.

9. This Interim Decision is effective immediately.

(S E A L)



THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

MANA L. JENNINGS-FADER

Administrative Law Judge

ATTEST: A TRUE COPY

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

Doug Dean,
Director