

Decision No. R20-0104-I

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 20V-0045CP

IN THE MATTER OF THE PETITION OF PATTI LYNN FEHRMAN FOR A WAIVER OF RULE 6109 (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: February 14, 2020

I. STATEMENT

1. On January 31, 2020, Patti Lynn Fehrman (Petitioner) filed a verified Petition for Waiver/Variance of Safety Regulations – Drivers of Vehicles with a seating capacity of 15 passengers or less, including the driver (Form PFW-D-15-1, Revised 5/15/2019) (Petition). Petitioner requests a waiver of the specific subparagraph(s) of Rule 6109 of the Commission Rules Regulating Transportation by Motor Vehicle, 4 *Code of Colorado Regulations* (CCR) 723-6: “(IX) – Visual disorder or impairment as defined in 4 CCR 723-6-6109(c)(IX).” Petition at 1. In support, Petitioner filed: (a) a Medical Examination Report Form (Form MCSA-5875); (b) a Medical Examiner’s Certificate (Form MCSA-5876); (c) a Certified Official Driving Record (driving record); and (d) a copy of Petitioner’s Driver License.

2. Colorado PUC Form PFW-D-15-1 is prepared in coordination with the Medical Examination Report and Medical Examiner’s Certificate/Driver Medical Certification Card (Form MER-15-1).

3. 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.

4. The filed Medical Examiner's Certificate states “I find this person is qualified...only when...[a]ccompanied by a vision waiver.” Medical Examiner’s Certificate at 1.

5. Other versions of Commission petition forms required expression of a qualified medical opinion as to the nature of the waiver sought:

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 (Form PFW-D-15-1, revised as of May 15, 2019), no longer requires a separate letter expressing an opinion by a qualified medical professional because the Form MER-15-1, Version Date 5/15/2018 form now incorporates that opinion. See “Medical Examiner's Certificate/Driver Medical Certification Card” (Version Date May 15, 2018).

7. Petitioner is largely free to select the manner of presenting her 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.

8. On or before **close of business on February 28, 2020**, Petitioner will be ordered

to:

- a) supplement the petition by filing the Medical Examiner's Certificate/Driver Medical Certification Card" (Version Date May 15, 2018) (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 common carrier 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.

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

10. **Petitioner is advised that failure to make one of the filings described above on or before February 28, 2020, will result in dismissal of the petition without prejudice.**

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

II. ORDER

A. It Is Ordered That:

1. Patti Lynn Fehrman (Petitioner) must supplement the Petition for Waiver/Variance of Safety Regulations – Drivers of Vehicles with a seating capacity of 15 passengers or less, including the driver (Form PFW-D-15-1, Revised 5/15/2019) 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 February 28, 2020**

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