UNITED STATES DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
OFFICE OF DRUG AND ALCOHOL POLICY AND COMPLIANCE
WASHINGTON, DC

In the Matter of: MICHAEL R. BENNETT and
WORKPLACE COMPLIANCE, INC.
DOT PIE No. 2009-1

Served: July 31, 2009

DECISION AND ORDER[1]

The Federal Aviation Administration (FAA) initiated a Public Interest Exclusion (PIE) proceeding, as described in 49 CFR Part 40, Subpart R, against Michael R. Bennett based on the Medical Review Officer (MRO) services Mr. Bennett and his company, Workplace Compliance, Inc., were providing to DOT-regulated employers. The FAA issued a correction notice to Mr. Bennett on March 6, 2009[2], and a notice of proposed exclusion on May 5, 2009. The FAA alleged the following compliance issues in both documents:

> In violation of 49 CFR Part 40, Subpart G, you performed all roles and responsibilities of an MRO, even though you are not a licensed physician (a Doctor of Medicine or Osteopathy), and therefore are not qualified to act as an MRO[3]. You used a medical doctor's name in Step 1 of all Federal Drug Testing Custody and Control Forms used by your consortium clients and those of Kroll InfoLink Screening Services, although the doctor listed in Step 1 has not been involved in providing MRO services since 1997.
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> Since 2005, you have verified and reported negatives and non-negative drug test results for your consortium clients and Kroll InfoLink Screening Services.

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[1] Decisions regarding whether to issue and the scope of Public Interest Exclusions are made by the Director of the Office of Drug and Alcohol Policy and Compliance, or his or her designee, under the procedures in 49 CFR Part 40, Subpart R.

[2] 49 CFR § 40.373(a) provides "If you are a service agent, the initiating official must send you a correction notice before starting a PIE proceeding.

[3] 49 CFR Part 40, Subpart G, specifically within 40 CFR § 40.121, states in pertinent part: "To be qualified to act as an MRO in the DOT drug testing program, you must meet each of the requirements of this section: (a) Credentials. You must be a licensed physician (Doctor of Medicine or Osteopathy)."

Procedural History

In the correction notice dated March 6, 2009, the FAA notified Mr. Bennett that they had conducted an investigation and found that he was not in compliance with 49 CFR Part 40 for the reasons set forth above. The FAA informed Mr. Bennett that his response time would be 60 days from his receipt of the correction notice[4].

On May 5, 2009, the FAA sent Mr. Bennett notice that a PIE proceeding was being initiated:

> You have not provided a response to our correction notice within the 60-day timeframe as permitted in 49 CFR part 40. We have determined that it is necessary to initiate a Public Interest Exclusion (PIE) proceeding, as required in 49 CFR part 40, Subpart R. As a result, we are sending this notice of proposed exclusion.

The record in this proceeding indicates that, after the FAA sent the notice of proposed exclusion, the FAA received an undated cover letter and attachments totaling thirty-four pages, which was signed by Michael R. Bennett and sent by facsimile transmission from Workplace Compliance, Inc. The facsimile transmission date was May 20, 2009. The record also shows that the FAA clarified with Mr. Bennett that this letter and attachments (hereinafter referred to as the "May 20, 2009 response") were submitted in response to the March 6, 2009 correction notice and not in response to the May 5, 2009 notice of proposed exclusion.

On May 29, 2009, the Director of the Office of Drug and Alcohol Policy and Compliance named the Deputy Director as the Director's designee for the purposes of this PIE proceeding. Also on May 29, 2009, the Director's designee was provided with the record in this proceeding.

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[4] 49 CFR § 40.373(c) states that the initiating official can decide not to start a PIE proceeding if the service agent has "come into compliance in the areas listed in the correction notice to the satisfaction of the initiating official within 60 days of the date you receive the notice."

On June 9, 2009, the Director's designee issued a letter to Mr. Bennett to provide clarification on several issues including that the Director's designee would be the decision-maker in this PIE proceeding. The letter explained that the proposed PIE could extend to Mr. Bennett and his company (Workplace Compliance, Inc.). Further, it noted that the record in this matter included documentation of the FAA's allegations regarding "a significant number of cases in which you verified test results for individuals who had laboratory confirmed non-negative results." This letter also provided Mr. Bennett with additional time, until June 25, 2009, in which to provide a response to the notice of proposed exclusion issued by the FAA on May 5, 2009.

After telephonic contacts from Mr. Bennett and his counsel within the extended timeframe, the Director's designee received written designation of counsel. By electronic mail dated June 29, 2009, Mr. Bennett's counsel in this matter responded, "I want to let you know that Mr. Bennett is not contesting the proposed exclusion of his business by your department." Therefore, as of June 29, 2009, the Director's designee considered the record of this case to be complete for the purposes of 49 CFR § 40.397.[5]

Facts

The FAA's allegations in this case are clear: Mr. Bennett and his company, Workplace Compliance, Inc., provided MRO services to clients on DOT-regulated tests without having a qualified MRO verifying the test results in violation of 49 CFR Part 40, Subpart G. Mr. Bennett does not contest the FAA's allegations.

[5] 49 CFR § 40.397 provides that the decision –maker in a PIE proceeding must render a decision within "60 days of the date when the record of a PIE proceeding is complete (including any meeting with the Director and any additional fact-finding that is necessary). The Director may extend this period for good cause for additional periods of up to 30 days."

Mr. Bennett owned and operated Workplace Compliance, Inc., which is a service agent[6] providing drug and alcohol testing services to DOT-regulated transportation industry employers including those regulated by the FAA[7]. It is important to note that 49 CFR § 40.3 clearly states "to act as service agents, persons and organizations must meet the qualifications set forth in the applicable sections of this part." It is repeatedly established in the record that Workplace Compliance, Inc. provides services that characterize it as a "Consortium/ Third Party Administrator" (C/TPA) under 49 CFR Part 40. As a C/TPA[8], Workplace Compliance, Inc., can provide or coordinate certain drug and alcohol testing services for DOT-regulated employers. Workplace Compliance, Inc. also provided MRO services for its clients, which included both DOT-regulated employers and other C/TPAs that needed MRO review and verification of DOT-regulated test results in accordance with 49 CFR Part 40, Subpart G. Workplace Compliance, Inc. does not contest that it conducted its MRO services under the name of Dr. Aaron C. Polk, M.D.

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[6] A service agent is defined in 49 CFR § 40.3 as "Any person or entity, other than an employee of the employer, who provides services specified under this part to employers and/or employees in connection with DOT drug and alcohol testing requirements. This includes, but is not limited to, collectors, BATs and STTs, laboratories, MROs, substance abuse professionals, and C/TPAs. To act as service agents, persons and organizations must meet the qualifications set forth in applicable sections of this part. Service agents are not employers for purposes of this part."

[7] The transportation industry employers subject to 49 CFR Part 40 include specific employers regulated by the Federal Aviation Administration, the Federal Motor Carrier Safety Administration, the Federal Railroad Administration, the Federal Transit Administration, the Pipeline and Hazardous Materials Safety Administration, and the United States Coast Guard.

[8] A C/TPA is defined as, "[a] service agent that provides or coordinates the provision of a variety of drug and alcohol testing services to employers. C/TPAs typically perform administrative tasks concerning the operation of the employers' drug and alcohol testing programs. This term includes, but is not limited to, groups of employers who join together to administer, as a single entity, the DOT drug and alcohol testing programs of its members. C/TPAs are not "employers" for purposes of this part." 49 CFR § 40.3.

According to the record, the FAA discovered possible noncompliance by Mr. Bennett and his company while conducting an inspection of Jet Professionals, an air carrier. During the inspection, the FAA inspectors asked about the status of the certifications of MROs who verified drug test results for the air carrier. Jet Professionals requested the relevant information from its service agent, Kroll InfoLink Screening Services (Kroll InfoLink), a C/TPA. Kroll InfoLink used Workplace Compliance, Inc. for MRO services. Kroll InfoLink contacted Michael R. Bennett of Workplace Compliance, Inc., for information concerning Dr. Polk's MRO certification status.

The record contains witness statements from Kroll InfoLink employees and admissions from Mr. Bennett that indicate that it quickly became apparent that Dr. Polk was not a qualified MRO because he had not received the qualification training required for MROs under 49 CFR § 40.121(c). In addition, the FAA obtained further information from Mr. Bennett that Dr.Polk had not been associated with Workplace Compliance, Inc. or Mr. Bennett since 2000, when Mr. Bennett moved to North Carolina. (See Statement of Michael R. Bennett, Workplace Compliance, Inc., February 19, 2009, FAA Item of Proof No. 5 (IOP 5)). Yet, Workplace Compliance, Inc. had been using Dr. Polk's name for the purpose of reviewing and verifying negative and non-negative DOT-regulated drug test results since 2000. (IOP 5) When the FAA questioned Dr. Polk's MRO qualifications, Mr. Bennett even provided a document he entitled "Verification of Certification," which stated that Dr. Polk was "certified" by an existing MRO organization. (See Monday, November 11, 2005 Verification of Certification for: Aaron C. Polk, Jr., M.D., FAA Item of Proof No. 25 (IOP 25)). However, according to the record in this proceeding, the "certification" in IOP 25 was created without the

knowledge of the MRO organization and the information in the document was false. Although it was well-documented in the record, the FAA did not specifically cite this falsification issue as a violation in its March 6 correction notice or its May 5 Notice of Proposed Exclusion.

Mr. Bennett stated that he found it more efficient to use Dr. Polk's name than to seek a qualified MRO. (IOP 5) Specifically, Mr. Bennett stated: "As we gained clients the MRO process was fine but very slow. I interviewed other M.D.'s but found little interest with an M.D. wanting to become an MRO in that era. I approached a few existing MRO's and tried to find sufficient service. Ultimately, our existing MRO service was as good as any I could find so we continued on as is." (IOP5) Furthermore, Mr. Bennett said, "I took full control of the result reporting process and handled all results from start to finish." (IOP 5) Mr. Bennett did not advise his clients that he did not have an MRO on staff and Workplace Compliance, Inc. continued to send written reports to its clients that continued to list Dr. Polk as the MRO. (IOP 5) The FAA's Item of Proof No. 7 (IOP 7) is a sixty-six-page list of active and non-active DOT-regulated employers for which Mr. Bennett provided MRO services between 2005 and February 18, 2009.

In addition to the failure of Workplace Compliances, Inc. to use a qualified MRO, the record also contained multiple references to a practice Mr. Bennett referred to as "green" record keeping. He stated "with my 'go green' filing method, I did not keep sufficient records of CCF copies and other documents used in handling records." (IOP 5) Mr. Bennett said that he utilized Federal Drug Testing Chain of Custody Form (CCF) Copy 1 and Copy 2, as normally required to verify laboratory confirmed test results under

Part 40. However, contrary to regulatory requirements, he then destroyed these copies, in violation of various regulatory provisions of Part 40 and DOT Agency and/or U.S. Coast Guard regulatory provisions. Mr. Bennett admitted that he is now "lacking the CCF Copy 1 and Copy 2 info that may be needed to finally, properly, and officially, review the Non Negative results that I handled." (IOP 5) The FAA did not specifically cite this issue in its March 6 correction notice or its May 5 Notice of Proposed Exclusion, although this is well-documented in the record.

On February 19, 2009, Mr. Bennett stated that he intended to "remove myself from any position where I would perform the duties of an MRO." (IOP 5) He also referred to his on-going attempts to obtain a qualified MRO for his clients. (IOP 5) In his May 20, 2009 correspondence, Mr. Bennett stated that he had obtained the services of a qualified MRO for his clients.

Issues

What is at the heart of this matter is that Workplace Compliance, Inc. provided MRO services to its clients without having anyone on its staff who was qualified to perform MRO duties since 2005.[9] Specifically, FAA alleged "[s]ince 2005, you have verified and reported negatives and non-negative drug test results for your consortium clients and Kroll InfoLink Screening Services." Notice of proposed exclusion issued by FAA on May 5, 2009, at page 1.

The MRO's review of a DOT-regulated drug test result is a key component in the fairness and integrity of the DOT drug testing program. The MRO is responsible for

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[9] The FAA appears to have limited its allegations to cases undergoing MRO review by Workplace Compliance since 2005, although the record contains evidence, including statements by Mr. Bennett that he was no longer associated with Dr. Polk after Mr. Bennett moved to North Carolina.

receiving and reviewing laboratory results generated by an employer's drug testing program and evaluating medical explanations for certain drug test results. The MRO is an independent and impartial "gatekeeper" and advocate for the accuracy and integrity of the drug testing process. When a laboratory reports to the MRO that a specimen is confirmed as "non-negative,"[10] the laboratory result is not final and is not reported to the employer until the MRO follows the verification process in 49 CFR Part 40, Subpart G. During the verification process, the individual can communicate to the MRO any legitimate medical explanation for the non-negative result. The MRO must determine the medical legitimacy of the employee's explanation, thereby providing the employee with due process. The MRO must determine whether to downgrade the laboratory confirmed non-negative result and report the downgraded result to the employer as a "negative," which allows an employee to continue performing safety-sensitive work; or the MRO must verify the non-negative result and report it to the employer so that the employee can immediately be removed from safety-sensitive work. The employee must undergo the return-to-duty process under 49 CFR Part 40, Subpart O. Often employees lose their jobs after the employer receives notification from the MRO that the employee had a verified non-negative test result. If the employee holds a certificate or license subject to the jurisdiction of a DOT Agency or the U.S. Coast Guard, the verified non-negative test result may also be grounds for suspending or revoking such privileges. Thus, incorrectly verifying a non-negative result can have severe repercussions for an employee. On the other hand, incorrectly down-grading a result can have disastrous results for

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[10] 49 CFR § 40.3 defines a non-negative specimen as "a urine specimen that is reported as adulterated, substituted, positive (for drug(s) or drug metabolite(s)) and/or invalid."

transportation safety because this would allow an illegal drug user to continue to operate in a safety-sensitive position.

When functioning properly under 49 CFR Part 40, the MRO: provides quality assurance review of the drug testing process for the specimens; determines if there is a legitimate medical explanation for laboratory confirmed positive, adulterated, substituted and invalid drug test results; ensures the timely flow of test result and other information to employers; and protects the confidentiality of the drug testing information. The MRO provides the employee with due process by considering relevant medical information that the employee offers to counter the confirmed laboratory result that indicates an allegation that the employee violated the drug testing regulations. Therefore, the MRO's role is key to the accuracy, integrity, and fairness of the Federal testing program.

The Department specifically limited the qualifying credentials of who can be an MRO to only a licensed physician who is a Doctor of Medicine or Osteopathy. See 49 CFR § 40.121(a). In rejecting requests to recognize professionals as eligible to become MROs, the preamble to the final rule for § 40.121(a) explains that "the Department believes that the variety and depth of expertise needed to carry out MRO responsibilities effectively is unlikely to be found in other health professionals. There are clearly differences in the level of training needed to qualify for the various health professions, and we believe that only those professionals with the highest level of training should play this key role." 65 Federal Register 79462, 79493 (Dec. 19, 2000). The Department further acknowledged that such credentials and relevant training are necessary to ensure that an individual is "able to make capably the difficult judgment calls that MROs are called upon to make." 65 Federal Register at 79493.

To ensure that an individual is qualified to fulfill the responsibilities of an MRO, the Department not only requires that the individual be a Doctor of Medicine or Osteopathy, but also that the individual meet the minimum training and continuing education requirements set forth in 49 CFR § 40.121. In establishing the training and continuing education requirements, the Department stated in the preamble to the final rule: "[e]nsuring that MROs are in the best possible position to play this role requires, in our view, that they be well trained both in the substance of drug testing issues and the rules they are called upon to apply." 65 Federal Register 79462 at 79493.

When Mr. Bennett played the role of the MRO in hundreds of non-negative test results he was undertaking a dangerous game. He was interviewing employees about their test results. Mr Bennett was checking the validity of prescription drugs (but the record also reflects that some pharmacies refused to speak with him about prescriptions because he was not a physician). In considering an employee's explanations for his or her non-negative rest result, the MROs must use his or her professional medical judgment and extensive knowledge of biochemistry and pharamacotherapeutics to determine, important and highly technical points. Some of these complex issues include: whether the prescription was legitimate; whether the level of drug metabolites reported by the laboratory was consistent with legitimate dosage and usage of the prescription; whether environmental, physiological, chemical, drug interaction or other factors could constitute a legitimate medical explanation for the presence of a drug metabolite, possible adulterant, or other reason for a non-negative result.

Mr. Bennett admitted that neither he nor Workplace Compliance, Inc. were associated with a qualified MRO during the period from 2005 through 2009. In the

absence of a qualified MRO, Mr. Bennett contacted DOT-regulated employees who had non-negative test results to inquire into whether they had legitimate medical explanations for their test results. Lacking the advanced professional education, experience, and training of a legitimate MRO, but armed with a handy MRO manual intended to assist legitimate MROs who already have the underlying requisite knowledge, Mr. Bennett took it upon himself to determine whether the substances detected by the laboratory in the urine specimens during the DOT-regulated testing process were actually illegal or justified by a legitimate medical explanation. He then verified, downgraded, or cancelled test results, and/or ordered employees to go in for direct observed collections, depending upon his assessments.

It is also important to note that individuals who were subject to Federal testing were providing Mr. Bennett with what may have been confidential information about their medical conditions and legal use of prescription medications. Each time this occurred, it was a gross violation of the respective individual's privacy rights during the DOT testing process, a search and seizure under the Fourth Amendment of the U.S. Constitution.[11]

Mr. Bennett's actions undermined the integrity and the legitimacy of every test result he verified, regardless of whether they were negative or non-negative. The non-negative test results he worked on were not addressed in accordance with the Federal law of 49 CFR Part 40. Mr. Bennett's actions have created risks to transportation safety and

[11] "Compelled urine tests are searches for the purposes of the Fourth Amendment's prohibition on 'unreasonable searches and seizures,' U.S. CONST. amend. IV." (BNSF Railway Company v. Department of Transportation, 566 F.3d 200, 206 (DC Cir. 2009) citing Skinner v. Ry. Labor Executives Ass'n, 489 U.S. 602, 617 (1989)).

have interfered with the privacy rights of the individuals who he interviewed. As such, his actions were extremely egregious.

Decision on the Public Interest Exclusion and Its Scope

This is the first PIE that the Department has issued since 40 CFR Part 40, Subpart R, was established by final rule in 2000. The purpose of a PIE is "[t]o protect the public interest, including protecting transportation employers and employees from serious noncompliance with DOT drug and alcohol testing rules." 49 CFR § 40.361(a). A PIE is used to remedy situations where a service agent "has shown that it is not currently acting in a responsible manner." 49 CFR § 40.361(b). The Department may issue a PIE "if we determine that you have failed or refused to provide drug or alcohol testing services consistent with the requirements of this part or a DOT agency drug and alcohol regulation." 49 CFR § 40.363(a).

The kinds of mitigating and aggravating factors that the decision-maker may consider are set forth in 49 CFR § 40.389. While the list is not exhaustive or exclusive, it provides an instructional framework for assessing whether and to what extent to grant a PIE against a service agent.

In the matter currently under consideration concerning Mr. Bennett and Workplace Compliance, Inc., the FAA has not cited any transportation-related accidents related to the actions of Mr. Bennett and his company. However, we need not face tragedy in order to appreciate the harm posed by the hundreds of non-negative verifications, down-grades, etc. made by Mr. Bennett. The record includes statements by

Mr. Bennett in which he admits that he spoke with individuals about their prescriptions, medical conditions, etc., in order to verify their test results.

Mr. Bennett also admits that he chose to verify test results his way instead of complying with 49 CFR Part 40, because it was "easier," as he states in his letter of May 20, 2009. In addition, the record reflects that many pharmacies refused Mr. Bennett's requests to check on the status of prescriptions because he was not able to prove to them that he was a physician. These refusals to cooperate with his requests were further red flags that should have warned Mr. Bennett about his very egregious violations.

The thousands of negative test results and the hundreds of non-negative test results Mr. Bennett verified were well-documented among the FAA's twenty-six items of proof. These thousands of test results spread between 2005 and 2009 clearly indicate a frequency of incidents and a prolonged duration of deliberate noncompliance.

This deliberate noncompliance was pervasive in Workplace Compliance, Inc. Mr. Bennett admitted that he marketed the company's MRO services, even though he knew that he could not legitimately provide such services. Each transportation-regulated employer and C/TPA that contracted with Workplace Compliance, Inc. for MRO Services was deliberately misled into the noncompliance by Mr. Bennett and his company. Thus, the noncompliance was deliberate and systemic within the workings of Workplace Compliance, Inc.

It is a matter of public record that Workplace Compliance, Inc. is a North Carolina corporation and has been incorporated there since Mr. Bennett filed the Articles of Incorporation in North Carolina in the year 2001. In addition, Workplace Compliance,

Inc. is incorporated as a franchise in the State of Texas, with the same corporate officers listed there as in the incorporation papers in North Carolina. Therefore, Workplace Compliance, Inc. is incorporated in at least two states, with the same corporate officers, including Michael R. Bennett.

In mitigation, the record shows that Mr. Bennett has accepted responsibility for the noncompliance and has stated that he now recognizes the seriousness of the misconduct that led to the notice of proposed exclusion. According to the record, Mr. Bennett cooperated fully with the Department during the investigation from late February through April of 2009. However, that cooperation did not begin until after he produced the falsified MRO certification during the FAA's inspection process. Until he decided to cooperate in mid-to-late February of 2009, Mr. Bennett continued to produce documents that were false and to deliberately mislead others who relied upon him and Workplace Compliance, Inc. Hundreds of employers took employees out of work or allowed them to continue to work after the drug test results that Mr. Bennett verified as either negative or non-negative.

The record reflects that Mr. Bennett has offered to shut down the operations of Workplace Compliance, Inc., and to turn his clients over to one or more other C/TPAs. However, Mr. Bennett did not reveal any intent to surrender Workplace Compliance, Inc.'s corporate status in North Carolina and the corporate and/or franchise status of this corporation elsewhere. Therefore, Workplace Compliance, Inc. and its franchises and corporate affiliates could continue to pose a threat to transportation safety.

As discussed above, the record shows that Mr. Bennett was responsible for many egregious violations that he perpetrated and perpetuated through his company, Workplace

Compliance, Inc. Through his own actions and through the corporation of Workplace Compliance, Inc, Mr. Bennett violated 49 CFR Part 40 multiple times on thousands of occasions. He and his corporation made a mockery of the MRO process and the integrity and fairness of DOT Federal testing, which is a Federal search and seizure under the Fourth Amendment of the U.S. Constitution. Mr. Bennett and his corporation violated the privacy expectations of individuals, and placed transportation safety at great risk. He falsified and destroyed documentation required to be maintained under the requirements of 49 CFR Part 40 and the FAA's regulations.

Therefore, it is appropriate to issue a PIE against Michael R. Bennett, Workplace Compliance, Inc., in North Carolina, Texas, and any other place it is incorporated, franchised, or otherwise doing business. This PIE will prohibit all employers regulated by DOT and the U. S. Coast Guard that are required to follow 49 CFR Part 40 from utilizing the drug and alcohol testing services of or doing business with Mr. Bennett and any other individuals who are officers, employees, directors, shareholders, partners, or other individuals associated with Workplace Compliance, Inc.

The maximum duration for a PIE can be five years and the facts of this case justify the maximum duration. In particular, when an unqualified individual acts as an MRO, there is a substantial potential harm that could result from such improper verifications and down-grades of drug test results. The frequency of the incidents in this matter numbered in the thousands and the duration of the noncompliance was spread over years, establishing a definite pattern of deliberate noncompliance. The noncompliance was pervasive in Workplace Compliance, Inc., having been planned, initiated, and carried out by its chief corporate officer, Mr. Bennett. Although Mr. Bennett ultimately

cooperated with the FAA in its investigation, this was only after his noncompliance and falsified MRO certification document had been discovered by the FAA. Therefore, this late-found "compliance disposition" is not a mitigating factor. Consequently, the total duration of this PIE will be 60 months.

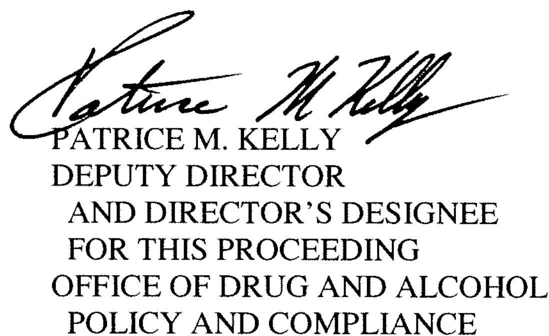
Conclusion – Scope and Duration of the Public Interest Exclusion

For the foregoing reasons, this decision will hereby immediately exclude Michael R. Bennett, Workplace Compliance, Inc., in North Carolina, Texas, and all other places it is incorporated, franchised, or otherwise doing business, and all other individuals who are officers, employees, directors, shareholders, partners, or other individuals associated with Workplace Compliance, Inc. (hereinafter referred to as "Michael R. Bennett, et al.") from acting as a service agent or providing any drug or alcohol testing services to any DOT- regulated entity for 60 months from the date of this decision, which will be July 31, 2014. Furthermore, as provided in 49 CFR § 40.409, this PIE prohibits any DOT-regulated employer from utilizing the drug and alcohol testing services of doing business with Michael R. Bennett, et al. until after July 31, 2014.

As described in 49 CFR § 40.401, the Department will notify employers and the public about this PIE by publishing a "List of Excluded Drug and Alcohol Service Agents" on its website at http://www.dot.gov/ost/dapc/ and will make the list available upon request. In addition, the Department will also publish a Federal Register notice to inform the public that Michael R. Bennett, et al. is subject to a PIE until July 31, 2014, in accordance with 49 CFR § 40.401(d). After July 31, 2014, Michael R. Bennett, et al. will

be removed from the list and the public will be notified of that removal, also in accordance with 49 CFR § 40.401(d).

In the meantime, Michael R. Bennett, et al., must notify each of his and their DOT-regulated employer clients in writing about the issuance, scope, duration, and effect of the PIE per 49 CFR § 40.403(a). This requirement may be satisfied "by sending a copy of the Director's PIE decision or by a separate notice . . . to each client within three business days of receiving from the Department the notice provided for in §40.399(b)." 49 CFR § 40.403(a). As part of this requirement, 49 CFR § 40.403(b) requires Michael Bennett, et al. to "offer to transfer immediately all records pertaining to the employer and its employees to the employer or to any other service agent the employer designates. You must carry out this transfer as soon as the employer requests it."



PATRICE M. KELLY
DEPUTY DIRECTOR
AND DIRECTOR'S DESIGNEE
FOR THIS PROCEEDING
OFFICE OF DRUG AND ALCOHOL
POLICY AND COMPLIANCE

Issued this 31st day of July, 2009.

APPEAL RIGHTS

Your rights to appeal this decision are set forth in 49 CFR Part 40, Subpart R, and are reprinted below for your convenience.

§ 40.405 May the Federal courts review PIE decisions?

The Director's decision is a final administrative action of the Department. Like all final administrative actions of Federal agencies, the Director's decision is subject to judicial review under the Administrative Procedure Act (5 U.S.C. 551 et. seq).

§ 40.407 May a service agent ask to have a PIE reduced or terminated?

(a) Yes, as a service agent concerning whom the Department has issued a PIE, you may request that the Director terminate a PIE or reduce its duration and/or scope. This process is limited to the issues of duration and scope. It is not an appeal or reconsideration of the decision to issue the PIE.

(b) Your request must be in writing and supported with documentation.

(c) You must wait at least nine months from the date on which the Director issued the PIE to make this request.

(d) The initiating official who was the proponent of the PIE may provide information and arguments concerning your request to the Director.

(e) If the Director verifies that the sources of your noncompliance have been eliminated and that all drug or alcohol testing-related services you would provide to DOT-regulated employers will be consistent with the requirements of this part, the Director may issue a notice terminating or reducing the PIE.