



**UNITED STATES OF AMERICA  
DEPARTMENT OF TRANSPORTATION  
OFFICE OF THE SECRETARY  
WASHINGTON, D.C.**

Issued by the Department of Transportation  
On the Third day of May, 2010

**R&M Aviation, Inc.**

**Violations of 49 U.S.C. §§ 41101 and 41712,  
Order 83-1-36, and 14 CFR Part 298**

**Docket OST 2010-0005**

**Served May 3, 2010**

**CONSENT ORDER**

This consent order concerns the unlawful holding out of air transportation by R&M Aviation, Inc., (R&M) a licensed direct air carrier,<sup>1</sup> as “AeroCare Medical Transport System, Inc.” (AeroCare), a name not listed on its Part 298 registration, in violation of 14 CFR 298.36 and 49 U.S.C. 41101. It also concerns unlawful conduct by AeroCare, which merged with R&M in 2009, at the time AeroCare was an indirect air carrier specializing in air ambulance services,<sup>2</sup> but held out air transportation as a direct air carrier, without the economic authority to do so, in contravention of 49 U.S.C. §§ 41101 and Order 83-1-36. These violations also constituted unfair and deceptive trade practices and unfair methods of competition in violation of 49 U.S.C. § 41712. This consent order directs R&M to cease and desist from such further violations and assesses R&M a compromise civil penalty of \$60,000.

As background, in addition to applicable Federal Aviation Administration (FAA) requirements, in order to engage in air transportation as a direct or an indirect air carrier, citizens of the United States<sup>3</sup> must hold economic authority from the Department, either in the form of a certificate of public convenience and necessity issued pursuant to 49 U.S.C. § 41101 or as an exemption from section 41101. In 1983, the Civil Aeronautics Board (CAB), which held jurisdiction over the

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<sup>1</sup> A “direct air carrier” is a person or other entity that provides air transportation and that has control over the operational functions involved in providing that transportation.

<sup>2</sup> An “indirect air carrier” is a person or other entity that engages indirectly in air transportation operations and who uses for such transportation the services of a direct air carrier.

<sup>3</sup> A “citizen of the United States” includes a corporation organized in the United States that 1) meets certain specified numerical standards regarding the citizenship of its president, officers and directors, and holders of its voting interest and 2) is under the actual control of citizens of the United States. 49 U.S.C. § 40102(a)(15).

economic aspects of aviation licensing prior to the Department, issued Order 83-1-36, a blanket exemption from what is now section 41101 that allows entities to operate as “indirect air carriers to the extent necessary... to hold out, arrange, and coordinate the operation of air ambulance services,” provided that they meet certain conditions.<sup>4</sup> While this exemption permits entities that are not duly licensed direct air carriers to sell air transportation in their own right as indirect air carriers, it does not permit such entities to hold themselves out to the public in a manner that would reasonably create the impression that they are direct air carriers. Such misrepresentations violate section 41101 and Order 83-1-36 and constitute an unfair and deceptive trade practice and unfair method of competition in violation of 49 U.S.C. § 41712.

In addition, 14 CFR 298.36 requires an air taxi operator or commuter air carrier to hold out to the public and conduct operations only in the name or names in which its air carrier certificate is issued and in which it is registered with the Department. Holding out air transportation in names other than those listed violates this provision, as well as 49 U.S.C. § 41101, the Department’s economic licensing requirement for air carriers, and constitutes an unfair and deceptive trade practice and unfair method of competition in violation of 49 U.S.C. § 41712.

An investigation by the Office of Aviation Enforcement and Proceedings (Enforcement Office) shows that AeroCare incorporated in 1994 under the name “AeroCare International Aeromedical Ambulance Service, Inc.”<sup>5</sup> to provide air ambulance services. On January 1, 2009, following the statutory merger of AeroCare and R&M, the assets and liabilities of AeroCare transferred to R&M, the surviving entity. For a period of time thereafter, R&M conducted air ambulance operations as AeroCare, a name not listed on its operations specifications or on its Part 298 registration as a trade or fictitious business name.<sup>6</sup>

From 1994 until its merger with R&M in 2009, AeroCare held neither the economic authority from the Department nor the corresponding safety authority from the FAA required of a direct air carrier. During this period, since the company had no authority to operate any aircraft, it used direct air carriers, including R&M, to carry out contracted air ambulance flights. An investigation of AeroCare’s advertising practices by the Enforcement Office, however, disclosed violations of 49 U.S.C. §§ 41101 and 41712, and Order 83-1-36. Specifically, a number of statements and representations appeared on AeroCare’s website in company news articles prior to the merger of AeroCare and R&M, which imply that AeroCare exercised operational control over flights in the manner of a direct air carrier. For example, one such article announced that “AeroCare’s new Cessna 421C went into revenue service today with it’s [sic] first flight. AeroCare transported a cardiac patient....” Another stated, “At 4am Sunday Morning, ... AeroCare departed California with a ventilator-dependent patient.....The flight was 19 hours in duration and the Lear 36 made fuel stops....prior to arrival in Kamatsu Japan.” Still another article stated, “Aerocare had it’s [sic] first revenue air ambulance flight. We flew a spinal cord

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<sup>4</sup> *Air Ambulance Operators, Blanket Exemption*, Order 83-1-36, 99 CAB 801 (1983).

<sup>5</sup> In 1999, the company’s articles of incorporation were amended, officially changing its name to “AeroCare Medical Transport System, Inc.”

<sup>6</sup> After the Department contacted R&M in late October 2009, the carrier amended its Part 135 operations specifications as of November 4, 2009, and its Part 298 registration as of March 3, 2010, adding AeroCare Medical Transport System, Inc. as a d/b/a.

injury patient...” In addition, a statement appeared on some pages of AeroCare’s website indicating that its medical flights are operated by R&M and other FAA certificated air carriers. The statement was misleading, however, in that it did not disclose that R&M and AeroCare had merged, and incorrectly characterized R&M as a wholly-owned subsidiary of AeroCare.

On January 1, 2009, AeroCare merged with R&M, at which time liability for the violations of 49 U.S.C. §§ 41101 and 41712 by AeroCare transferred to R&M, the continuing corporation. Although R&M was at that time and continues to be a duly registered air taxi, it is required under section 298.36 to hold out air transportation using only names listed on its Department-approved registration. From January 1, 2009, until it was contacted by the Enforcement Office late that year, R&M held out its air taxi operations under the unregistered trade name “AeroCare,” in violation of that section.<sup>7</sup>

In mitigation, R&M asserts that any alleged noncompliance was unintentional and inadvertent and it is committed to full compliance with the Department’s regulations and all applicable laws. Furthermore, upon notification of its noncompliance, R&M cooperated fully with the Department, initiating prompt remedial action to bring the website, advertising materials, and operations into compliance. In addition, R&M also points out that for over 16 years it has been an exemplary corporate citizen by donating flights to hundreds of indigent patients and providing top notch care to critical patients throughout the world.

The Enforcement Office has carefully considered all of the information available to it, including that provided by R&M, but continues to believe that enforcement action is warranted. In order to avoid litigation, the Enforcement Office and R&M have reached a settlement of this matter. Without admitting or denying the violations described above, R&M agrees to the issuance of this order to cease and desist from future violations of 14 CFR 298.36, 49 U.S.C. §§ 41101 and 41712, and Order 83-1-36. R&M further agrees to the assessment of \$60,000 in compromise of potential civil penalties otherwise assessable against it. This compromise assessment is appropriate in view of the nature and extent of the violations in question, serves the public interest, and establishes a deterrent to future similar unlawful practices by R&M and other air carriers.

This order is issued under the authority contained in 49 CFR 1.57a and 14 CFR 385.15.

ACCORDINGLY,

1. Based on the above discussion, we approve this settlement and the provisions of the order as being in the public interest.
2. We find that during the period of time it was an indirect air carrier, AeroCare Medical Transport System Inc. violated Order 83-1-36 and 49 U.S.C. § 41101, as described above, by holding itself out as a direct air carrier without possessing the appropriate economic authority and

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<sup>7</sup> See *supra* note 6.

that liability for these violations transferred to R&M Aviation, Inc., as AeroCare's successor in interest, following the merger of the two companies in January 2009.

3. We find that R&M Aviation, Inc. d/b/a AeroCare violated 14 CFR 298.36 and 49 U.S.C. § 41101, as described above, by holding itself out to do business in a name for which it lacked approval.

4. We find that by engaging in the conduct described in paragraph 2, above, AeroCare engaged in an unfair and deceptive practice and an unfair method of competition in violation of 49 U.S.C. § 41712, and that liability for these violations transferred to R&M Aviation, Inc., as AeroCare's successor in interest, following the merger of the two companies in January 2009.

5. We find that by engaging in the conduct described in paragraph 3, above, R&M Aviation, Inc. d/b/a AeroCare engaged in an unfair and deceptive practice and an unfair method of competition in violation of 49 U.S.C. § 41712.

6. We order R&M Aviation, Inc. d/b/a AeroCare and all other entities owned and controlled by or under common ownership with R&M Aviation, Inc. and its successors and assignees, to cease and desist from further violations of 49 U.S.C. §§ 41101 and 41712 and Order 83-1-36.

7. We assess R&M Aviation, Inc. a compromise civil penalty of \$60,000 in lieu of civil penalties that might otherwise be assessed for the violations described in ordering paragraphs 2, 3, 4, and 5, above, subject to the payment schedule set forth in subparagraphs 7(a) through (c) below. Failure to pay the penalty as directed will subject R&M Aviation, Inc., to the assessment of interest, penalty, and collection charges under the Debt Collection Act and to possible additional enforcement action for failure to comply with this order.

(a) \$20,000 shall be due and payable within 30 days after the service date of this order.

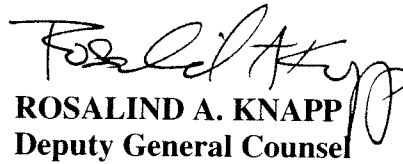
(b) \$20,000 shall be due and payable within 60 days after the initial payment as set forth in subparagraph (a) above.

(c) \$20,000 shall be due and payable within 90 days after the initial payment as set forth in subparagraph (a) above.

8. Payments shall be made by wire transfer through the Federal Reserve Communications System, commonly known as "Fed Wire," to the account of the U.S. Treasury as described in the attached instructions.

This order will become a final order of the Department 10 days after its service date unless a timely petition for review is filed or the Department takes review on its own initiative.

**BY:**

  
**ROSALIND A. KNAPP**  
**Deputy General Counsel**

**(SEAL)**

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