



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

Issued by the Department of Transportation  
on the Eighteenth day of June, 2010

**Mercy Flights, Inc.**

**Violations of 49 U.S.C. §§ 41101 and 41712**

**Docket OST-2010-0005**

**Served June 18, 2010**

**CONSENT ORDER**

This order concerns the unlawful holding out of direct air transportation by Mercy Flights, Inc., (“Mercy Flights”), an air taxi operator registered with the United States Department of Transportation (“Department”) pursuant to 14 CFR Part 298 specializing in air ambulance services. As described more fully herein, by holding itself out to the public as an operator of an aircraft that it did not operate, Mercy Flights exceeded the scope of the economic authority conferred by its registration as an air taxi under 14 CFR 298.21, and thus violated 49 U.S.C. § 41101, the Department’s economic licensing requirement for air carriers. In addition and in so doing, Mercy Flights violated the statutory prohibition against unfair and deceptive practices in the sales of air transportation, 49 U.S.C. § 41712. This consent order directs Mercy Flights to cease and desist from such further violations and assesses \$30,000 in compromise of civil penalties against Mercy Flights.

Pursuant to 49 U.S.C. § 41101, no citizen of the United States<sup>1</sup> may hold out or operate air transportation without first having been awarded a certificate of public convenience and necessity from the Department, or without first having been granted an exemption from this requirement.<sup>2</sup> Under 14 CFR Part 298, an on-demand air carrier<sup>3</sup> may be exempted from the certificate requirement of section 41101 provided, among other requirements, that it registers with the Department a list of the specific aircraft that it operates as an air taxi, 14 CFR

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

<sup>2</sup> This requirement is separate and distinct from the safety-related licensing requirements of the Federal Aviation Administration.

<sup>3</sup> The exemption provided under 14 CFR Part 298 is only available to air taxi operators that use only small aircraft in the performance of on-demand air service. Under this part, a “small aircraft” is defined as one originally designed to have a maximum passenger capacity of 60 seats or fewer or a maximum payload capacity of 18,000 pounds or less. 14 CFR 298.2.

298.21(c)(1)(v), and files with the Department proof of appropriate liability insurance, 14 CFR Part 205 and 298.37. Whether operating under authority granted by certificate or exemption, an air carrier cannot hold out<sup>4</sup> air transportation in a manner that creates in the mind of a reasonable person the impression that it operates an aircraft that is operated by another person or entity. Such a misrepresentation violates section 41101, and constitutes an unfair and deceptive trade practice and unfair method of competition in violation of 49 U.S.C. § 41712.

Mercy Flights is an on-demand air carrier based in Medford, Oregon, that has held out and provided air ambulance services to the public for more than a half century. Since 1950, it has owned and operated a variety of fixed-wing aircraft and provisioned these aircraft with flight medical staff and equipment. Mercy Flights' current exemption authority, issued pursuant to 14 CFR Part 298, extends to the operation of two twin-engine turbo-prop aircraft (King Air C90 N117MF and King Air C90B N118MF), both of which it also owns. In 1992, Mercy Flights purchased a ground ambulance service that held a contract to provide local 9-1-1 response in Jackson County, Oregon. Contemporaneous with this purchase, Mercy Flights also began to provide air medical staffing and equipment to, and to coordinate the utilization of, rotary-wing (helicopter) air ambulance transportation. This has been done under an exclusive contract with T.L. Forest Products, Inc., and its successor entity, BTS, LLC ("BTS"), which owns and operates a 1988 Messerschmitt-Bölkow-Blohm ("MBB") Bo 105CBS-5, N131AE, and which maintains a current Part 135 Air Carrier Certificate for the helicopter. By virtue of its contract with BTS, based on location, time and cost, Mercy Flights has been able to select between its own ground or fixed-wing air ambulance services and the rotary-wing air ambulance services available from BTS, when called upon to provide such services.

An investigation of Mercy Flights' advertising practices by the Office of Aviation Enforcement and Proceedings ("Enforcement Office") has revealed clear violations of 49 U.S.C. §§ 41101 and 41712. Namely, Mercy Flights has recently represented to the public that it operates a rotary-wing aircraft (N131AE) that was not covered by its Part 135 operations specifications, was not included on its registrations made under Part 298, and which it admits it has never operated.

For a period during 2009, the "Air Services" page accessed under the "Services" tab of Mercy Flights' Internet homepage stated, "Mercy Flights staffs the helicopter with a pilot, registered nurse, and paramedic, trained and equipped to handle most critical emergencies within a 150-mile radius of Medford, Oregon." Further, the "Frequently Asked Questions" page of the Mercy Flights website makes prominent note of "[o]ur Emergency Medical Transport Helicopter Ambulance serves Southern Oregon ... and Northern California." In a similar

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<sup>4</sup> For the purposes of section 41101, the holding out of air transportation services, as well as the actual operation of air transportation services, constitutes "engaging" in air transportation. When Title 49 of the United States Code was recodified in 1994, Congress altered the terminology of 49 U.S.C. § 41101, which had previously stated that no carrier could "engage" in air transportation without appropriate authority, to state that no carrier could "provide" air transportation without appropriate authority. At the time, Congress made clear the purpose of the change was purely stylistic ("for consistency"), and that it did not intend to affect any substantive change to the statute. Act of July 5, 1994, Pub.L. 103-272, § 6(a), 108 Stat. 745, 1378.

fashion, newsletters available on Mercy Flights' website, such as a Spring 2009 newsletter entitled "Into the Night," made repeated references to "our medical helicopter," "our helicopter," or "our planes," in a manner that implied ownership and operation by Mercy Flights of a fleet of vehicles that included at least one rotary-wing aircraft. Indeed, many Mercy Flights advertisements include an image of the BTS helicopter, with the Mercy Flights name and logo prominently emblazoned thereupon, and with no indication that the helicopter is, in fact, operated by an entity other than Mercy Flights. In isolation and collectively, these statements and images implied that Mercy Flights operated the BTS helicopter in the manner of a direct air carrier, and reasonably could lead consumers to conclude that Mercy Flights has the authority to operate its own rotary-wing aircraft.

In mitigation, Mercy Flights states that it has always intended to comply fully with all regulations pertaining to the presentation and advertising of its services and any violations of Department regulations were inadvertent. Furthermore, Mercy Flights points out that since receiving notice from the Enforcement Office, it has fully cooperated with the Enforcement Office to bring its advertising into compliance with Department regulations. Specifically, Mercy Flights asserts that it has removed from information made available to the public any indication that it owns a helicopter or furnishes a pilot of the helicopter.

The Enforcement Office has carefully considered all of the information available to it, as well as the cooperation of Mercy Flights, Inc., but continues to believe that enforcement action is warranted. In order to avoid litigation, the Enforcement Office and Mercy Flights, Inc., have reached a settlement of this matter. Without admitting or denying the violations described above, Mercy Flights, Inc., agrees to the issuance of this order to cease and desist from future violations of 49 U.S.C. §§ 41101 and 41712. Mercy Flights, Inc., further agrees to the assessment of \$30,000 in compromise of potential civil penalties otherwise assessable against it. Of this total amount, \$15,000 shall be paid under the terms described below. The remaining \$15,000 shall be paid if Mercy Flights, Inc., violates this order's cease and desist or payment provisions during the 12 months following the date the first payment is due under this order, in which case the entire unpaid amount shall become due and payable immediately and Mercy Flights, Inc., may be subject to further enforcement action. 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 Mercy Flights, Inc., and other direct 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 this order as being in the public interest;
2. We find that Mercy Flights, Inc., violated 49 U.S.C. § 41101, as described above, by holding itself out as the operator of a rotary-wing aircraft without possessing the appropriate economic authority;

3. We find that by engaging in the conduct and violations described in ordering paragraph 2, above, Mercy Flights, Inc., engaged in an unfair and deceptive practice and unfair method of competition in violation of 49 U.S.C. § 41712;
4. We order Mercy Flights, Inc., and all other entities owned and controlled by or under the common ownership and control with Mercy Flights, Inc., and its successors and assignees to cease and desist from further similar violations of 49 U.S.C. §§ 41101 and 41712;
5. We order Mercy Flights, Inc., to submit to the Office of Aviation Enforcement and Proceedings on the one-year anniversary of the service date of this order, copies of all advertising material, including paper copies of all versions of its Internet website, that Mercy Flights, Inc., has caused to be published since the service date of this order;
6. We assess Mercy Flights, Inc., a compromise civil penalty of \$30,000 in lieu of civil penalties that might otherwise be assessed for the violations described herein. Of this total penalty amount, \$15,000 shall be due and payable in twelve equal monthly installments of \$1,250 to be paid no later than the first day of each month after the date this order is issued. The remaining \$15,000 shall be due and payable if, within one year following the date the first payment is due under this order, Mercy Flights, Inc., violates the cease and desist provisions of this order, in which case, the entire unpaid portion of the civil penalty shall become due and payable immediately. Failure to pay the penalty as prescribed in ordering paragraph 7, below, shall subject Mercy Flights, Inc., to the assessment of interest, penalties, and collection charges under the Debt Collection Act and to possible enforcement action for failure to comply with this order; and
7. 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. The wire transfers shall be executed in accordance with the instructions contained in the Attachment to this order.

This order will become a final order of the Department ten (10) days after its service 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)