

ORIGINAL

FEB 27 1979

Decision No. 90017

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Investigation for the purpose of considering and determining minimum rates for transportation of any and all commodities statewide including but not limited to those rates which are provided in Minimum Rate Tariff 2 and the revisions or reissues thereof.

Case No. 5432
Petition for Modification
No. 935
(Filed December 20, 1976;
amended October 28, 1977)

In the Matter of the Investigation for the purpose of considering and determining minimum rates for transportation of general commodities within San Diego County as provided in Minimum Rate Tariff 9-B and the revisions or reissues thereof.

Case No. 5439
Petition for Modification
No. 298
(Filed December 20, 1976;
amended October 28, 1977)

In the Matter of the Investigation for the purpose of considering and determining minimum rates for transportation of general commodities in the Counties of Contra Costa, Lake, Marin, Mendocino, Monterey, Napa, San Benito, San Mateo, Santa Clara, Santa Cruz, Solano and Sonoma, and in the County of Alameda and in the City and County of San Francisco as provided in Minimum Rate Tariffs 1-B and 19 respectively and the revisions or reissues thereof.

Case No. 5441
Petition for Modification
No. 379
(Filed December 20, 1976;
amended October 28, 1977)

Frederick H. Kranz, Jr., Attorney at Law,
for Advanced Business Services, Inc., dba
A Advanced Mail Delivery Service,
petitioner.

Knapp, Stevens, Grossman & Marsh by Wyman C.
Knapp, Attorney at Law, for Pacific
Messenger Service, Inc.; Charles D. Gilbert
and H. Hughes, for California Trucking
Association; E. O. Blackman, for Blue Streak
Messenger and Delivery Service; protestants.
Matthew J. Desmond, for Desmond Mail Service,
interested party.
Everest A. Benton, for the Commission staff.

O P I N I O N

By these petitions, Advanced Business Services, Inc., a corporation, doing business as A Advanced Mail Delivery Service (Advanced) seeks exemption or, in the alternative, a deviation from the minimum rates and rules named in Minimum Rate Tariffs 1-B, 2, 9-B, and 19 for the "courier type" transportation of medical and dental supplies as described under specified item numbers in the National Motor Freight Classification 100-C (NMFC) under the heading Dental or Hospital Supply Group^{1/} and an item listed as Medical and Dental Supplies NOS (not otherwise specified). Advanced holds permits to operate as a highway contract carrier and as a radial highway common carrier under File No. T-104,019. By D.86446 in C.5432, Petition for Modification No. 915 and related matters, Advanced's exemption authority for courier-type transportation was expanded to include medical and dental

1/ See Appendix.

supplies and related equipment.^{2/} By D.86682 a Petition for Rehearing was denied and D.86446 was modified by removing the medical and dental supplies and related equipment description from the authority. Advanced is again seeking to have said commodity description included in its exemption authority.

Protests were filed by Pacific Messenger Service, Inc. (PMS), Blue Streak Messenger and Delivery Service (Blue Streak), Jet Delivery, Inc., 1-2-3 Messenger Service, ABC Messenger Service, Inc., Smith Trucking, Waddell Trucking, Road Runner Express, and California Trucking Association (CTA); Desmond Mail Service appeared as an interested party.

After duly published notices a prehearing conference was held on June 24, 1977, and hearings were held on October 18, 1977, April 26 and 27, 1978 before Administrative Law Judge Bernard A. Peeters in Los Angeles.

The Issues

At the prehearing conference the parties agreed upon the following issues:

1. Whether the proposed transportation service, i.e., courier-type service, is required because of the emergency-type shipments of medical and dental supplies?

^{2/} "1. Advanced Business Services, Inc., doing business as A Advanced Mail Delivery Service, is exempted from the otherwise governing provisions of Minimum Rate Tariffs 1-B, 2, 9-B and 19 when engaged in the 'courier type' transportation of:

- "a. Human and animal blood, organs, specimens, medical and dental records and documents, X-ray photographs, medical and dental supplies and related equipment, drugs, prescription items and pharmaceuticals; and
- "b. Checks, drafts, money orders, transit items, mail, audit media, audit items, data processing materials, paper punch tapes, tabulating cards, film, video tapes, legal documents, title policies and documents, radioactive pharmaceuticals, printed or reproduced material and business records; when transported in vehicles not exceeding a licensed weight of 4,500 pounds."

2. Whether the medical and dental supply items for which an exemption or deviation is sought are items that are in the regular inventory of the users and thus transported as a usual or normal freight shipment?

3. Whether it is reasonable to include, as one of the items for which an exemption or deviation is sought, the item Medical and Dental Supplies NOS?

4. Whether the proposed exemption or deviation would result in predatory pricing?

5. Whether the proposed transportation is compensatory?

The essential issue is whether medical and dental supplies, as listed in the NMFC, should be exempted from regulation?

At the outset we shall take official notice of the record and decisions in Advanced's Petition 915 in C.5432 and related matters. In this petition Advanced sought to expand its exemption authority to include medical and dental supplies and related items. By an ex parte order in D.86446 we granted Advanced's request. PMS was not served with Advanced's petition and had no opportunity to protest; therefore PMS filed a Petition for Rehearing. The petition was denied but D.86446 was modified to delete medical and dental supplies and related items from Advanced's authority.

We relate the above experience to point out that Advanced apparently does not consider it necessary to comply with our Rules of Practice and Procedure^{3/} since in the matter at bar it did not serve any individual carriers either. It merely served CTA and relied upon whatever notice it might publish. Upon direction of the ALJ, Advanced made service upon a number of individual carriers

^{3/} Rule 42.1 (a)(1). ". . . Copies of the application must be served on carriers known to be providing this service, and a certificate of service showing the individual carriers served shall be attached to the application."

with resultant protests being filed. We do not care to comment on Advanced's motives for its failure to comply with the rules, if any it has, but we do admonish Advanced to strictly comply with all of our rules in future proceedings it may be involved in before this Commission.

Prior to the scheduled hearing Advanced amended its petition to delete its alternative request for deviation authority and to have Ordering Paragraph 2a of D.86682 modified to read:

"a. Human and animal blood, organs, specimens, medical and dental records and documents, X-ray photographs, drugs, prescription items and pharmaceuticals, medical and dental supplies." (Underscored phrase added.)

Advanced also withdrew its Petition 298 in C.5439.

The Evidence

Advanced presented its president, Fred Sardella (Sardella), who sponsored Exhibit A-1, his prepared testimony. Sardella testified that he withdrew his request for a deviation because a rate under a deviation authority is too inelastic to permit proper operation of his service; that costs of operations are extremely volatile and variable; and that in order to operate a successful courier business, it is necessary to have a rapid response time due to increases or decreases in the costs of operation; therefore, it has been determined that the Advanced operations require exemption status if it is to deliver medical and dental supplies as part of its courier service. He also stated that his amended application excluded the county of San Diego, the cities of Fresno and Bakersfield, and a 50-mile radius from each of these cities. Sardella pointed out that Advanced presently operates a courier service for various exempted items such as medical and dental specimens, medical and dental records and documents, X-ray photographs, drugs, prescription items, and pharmaceuticals which are transported in vehicles not exceeding a

licensed weight of 4,500 pounds, with a size consistent with hand delivery (versus mechanical means). The medical and dental supplies would be handled in the same manner if the exemption is granted. According to Sardella the shipments of medical and dental supplies would not be subject to packaging restrictions; the shipments are generally directed to densely populated metropolitan business areas within a pre-defined geographical territory; the time of delivery is dependent on the needs of the customer with same day delivery in some instances and next day delivery generally with deliveries to a specific person located within a delivery point (versus delivery to a receiving dock). Although Sardella describes the medical and dental supplies by using the specific item number descriptions contained in the NMFC, it is not his intention that the packaging requirements of the NMFC be followed. Also, while a vast majority of the medical and dental supply shipments would fall under the specific NMFC group numbers descriptions, a small percentage would fall under the NOS category. Sardella sets forth his rationale for the requested exemption and explanation of how the proposed delivery amounts to courier service as follows:

"In Decision Number 86378, dated September 14, 1976, the Commission granted a blanket exemption for the courier delivery of business records and medical specimens. In so doing, the Commission described the elements of a courier service, and identified at least eight (8) characteristics of a courier service. The characteristics noted were:

- "(1) The service generally moves a container provided by the carrier and sealed by the customer.

"In the instant matter, the facts are even more indicative of courier service. The container is not only sealed by the customer, but is usually provided by the customer. Normally, the container is no more than a paper bag and when not a paper bag, it is provided in repacked boxes.

"(2) The movement of the container is performed on a daily scheduled basis.

"Here, the proposed method of delivery is on an on-call basis. The shipments provided by the customer each day would be shipped to only a portion of the shipper's customer base. Stated somewhat differently, there would be a pick-up each day but the destinations would vary with the needs of the shipper.

"(3) Most shipments are small in size and weight.

"In these Petitions, Advanced states that the shipments are generally small in size and weight. Pursuant to my instructions, the tickets for these shipments during the exempt period were analyzed. During this period, over 65% of the shipments were ten (10) pounds or less. By any definition, this is small in size and weight. In addition, no shipment will exceed 75 pounds.

"(4) Courier service often involves time deadlines set by the customer.

"This requirement, of course, is one of the main indices of courier service. The medical and dental supplies are always required by the professional office or hospital on a deadline. Cotton swabs, for example, are required when they are needed--not on a scheduled delivery cycle. Time deadlines were the hallmark of the deliveries in the exempt period.

"(5) Courier service is door-to-door often requiring pick-up and delivery during the nighttime hours.

"(6) On some shipments, the driver is required to effect delivery to a particular person located at a large facility.

"Under the former exemption, this was precisely the case. The deliveries were generally directed to Doctors or Dentists at specific locations in a large medical facility. There was certainly no loading dock for these deliveries; indeed, the deliveries were directly to the particular professional office requiring the shipments. No change will occur if the within Petitions are granted. Further, deliveries of emergency items were and would be directed to receptionists or medical secretaries in a large office building.

"(7) The services involved may require special or unusual routing to effect expedited delivery of certain items.

"Due to the high-urgency requirement of some customers, delivery sequence may be altered to accommodate the need for such urgency items. It must be kept in mind that the deliveries are to medical professionals involved in treating the ill and life-threatened. Of course, it follows that deliveries must be rapid and not dependent on a rigid delivery cycle.

"(8) In determining a reasonable charge for these shipments, all of the various factors have to be considered.

"Petitioner agrees with the Commission that the pricing involves many variables, and a single price per unit weight does not give sufficient latitude to Petitioner to deliver the commodities. The price to be charged is simply a function of the weight plus the costs (imbedded) plus the circumstances plus a profit margin. Each account's requirements would dictate where pricing should be placed such that the account is profitable. Included of course, in the establishment of price are the foregoing factors, weight, of course, quantities of deliveries tendered and the area to be served (density)." (Exh. A-1, pp. 7-10.)

With respect to operating costs of the proposed transportation of exempted medical and dental supplies, Sardella relied upon his experience of three months during which he had such an exemption. Based upon this experience he projects a revenue of \$9.00 per hour; direct costs calculated at 36.5 percent of revenue or \$3.28 per hour leaving a gross profit of \$5.72 per hour. From this the following expenses were deducted: operational expenses - 44.5 percent of revenue or \$4.01; sales and administrative expenses at 12 percent of revenue or \$1.08 per hour resulting in a profit of \$0.63 per hour or 7 percent of the hourly revenue.

Sardella answers the issues set forth above as follows: As to the first issue "whether the type of service for which the exemption is being sought is courier service in the nature of emergency-type shipments" is not a characterization by the petitioner, but of the protestant. Even so, Sardella believes the proposed deliveries would come under the characterization since he states that speed of delivery is involved particularly for "the great bulk of deliveries which consisted of surgical gloves, tongue depressors, syringes, needles, sutures and catheters, items which are needed, quite literally, in an emergency situation" and which are not stocked in large amounts by doctors and dentists. He points out that a need was found for the fast delivery, in small quantities, of medical and dental supplies during the period his exemption was in effect. The NOS category is included to accommodate the few shipments which do not conform exactly to one of the 23 specific groupings. These 23 specific descriptions were included in response to the arguments raised in the Petition for Rehearing pointing out that the original petition did not describe any specific commodity under the medical and dental supplies grouping. Furthermore, the commodities transported under the medical and dental grouping during the short period an exemption was in effect were analyzed and found to number over 10,000 different items. It would be impractical to list such a number of items. On the other hand, to use the NMFC descriptions exclusively would not be appropriate either since the classification is directed toward delivery of items from a manufacturer to a distributor not from a distributor to a retailer. Therefore, to protect the customer, since the NMFC is not designed for courier service, the medical and dental supplies NOS description was included to protect the customer. Insofar as using the exemption for predatory pricing practices, Sardella testified that he knows of no competition in the areas he wishes to serve with the possible exception of indirect competition

with United Parcel Service (UPS). In response to the fifth issue as to whether the proposed service would be compensatory, Sardella stated unequivocally that if the exemption is granted the service would be compensatory, and that Advanced does not propose to operate a negative cash-flow operation. ✓

Under cross-examination the following facts were developed from Sardella: If the exemption is granted, a limitation of 75 pounds per shipment would be acceptable; with respect to questions regarding the pricing advantage of an exemption versus a deviation Sardella had the following to say:

"I think that the exemption--to go into history, okay, I had originally applied for a deviation some years back and received the deviation.

"Two weeks later there was an exemption granted to a competitor of mine.

"I called the Commission and asked them about it, and they said: Yes, we're sorry. If you'll just go ahead and file that, we'll get that straightened out for you and you'll get an exemption.

"The way I feel is any carrier who wants an exemption for pharmaceutical supplies and drugs can just go ahead and file and be granted ex parte, and, you know, come one, come all, let's say, to the competition.

"And you know, I hope they make as much money as I do. I hope that clarifies the question for everybody."

"Q. Do you know if the labor costs of these other carriers are the same level as yours?

"A. That is not my problem. I supply a labor market. I have some 400 and some odd drivers working for me currently, and I supply a labor market that there would be a lot of unemployed people if it wasn't available.

"We are supplemental income employers, and we're not a primary source of income. We do not hire people looking for full-time work. We have only part-time work, and it's a supplemental source of income for them." (RT pp. 56-57.)

Sardella testified that he is not transporting medical and dental supplies. However, if his requested exemption is granted he intends to actively solicit potential customers for this business.

"...an exemption allows you to respond much more to the economics of the situation if an account-- some accounts might require more personalized handling, more special requests of when to make the deliveries, versus others, and if you have the same deviated rate for all of them, it would be unfair.

"I think it should be based on the volume and the particular facts or circumstances surrounding the types of deliveries that you're going to be making."

"ALJ PEETERS: Am I to understand from that answer, then, that what you're really telling me is under an exemption you have flexibility of rates, under a deviation you do not?

"THE WITNESS: Yes, sir." (RT p. 72.)

In response to a question as to why should the Commission grant an exemption for medical and dental supplies Sardella replied as follows:

"Well, I think one of the reasons I've brought out in my testimony, I believe that one of the reasons for it is that the rates are flexible rates, and it's easier to negotiate than it is with a deviation because the circumstances of each company would dictate different economies and therefore different costs to us, which would result in varying prices." (RT p. 78.)

Three protestants filed appearances and distributed their prepared testimony which were received in evidence as Exhibits P-1, P-2, and P-3. Advanced voluntarily waived its right to cross-examine the sponsors of these exhibits.

Mr. Rodney R. Starkey's, Secretary-Treasurer of PMS, testimony, Exhibit P-1, shows that PMS operates as a highway common carrier and also as a radial highway common carrier and household goods carrier; and that out of 1976 operating revenues of \$826,130, about \$165,225 was derived from transportation items identified

"Minimum Rate Tariffs 2 and 9-B" as being of a courier type and exempt from minimum rates. Of the balance of \$660,900 derived from transportation under common carrier and minimum rates, approximately \$80,000 thereof was derived from medical and dental supply traffic. PMS owns and operates a fleet of 35 vehicles, 29 of which are of the panel type with a licensed weight under 4,500 pounds and used in its courier service. PMS's witness points out that there are numerous item numbers under the Dental or Hospital Supply Group in NMFC 100-C which Advanced does not list for exemption status, but that under Advanced's item "Dental or Hospital Supplies NOS NMFC" would be included in the exemption. Furthermore, there are rates published in PMS's common carrier tariff for these items, as well as minimum rates. It is PMS's considered opinion that none of the dental or hospital supply group items contained in NMFC 100-C should be made the subject of an exemption.

Blue Streak presented its president and sole owner to testify (Exh. P-2). His testimony shows that Blue Streak has been in the courier and small parcel delivery business since 1965 and specializes in the delivery of medical and pharmaceutical supplies for Amfac Drug Supply Co. (Amfac) (its principal shipper with locations in Alhambra, Van Nuys, and Torrance), Ipco Hospital Supply, American Red Cross, and USC Los Angeles County Hospital, as well as other nonmedical shippers such as IBM and Xerox. The transportation for these shippers is performed under rate deviations granted in D.86463 and D.88047. It is the witness's opinion that if Advanced is granted an exemption for medical and dental supplies PMS would be very vulnerable to rate cutting and would probably lose its principal shipper - Amfac. ✓

CTA presented written testimony (Exh. P-3) wherein it is stated that this matter was taken off calendar with the consent of the parties until a decision in C.5432, OSH 922 was handed down since that matter involved a complete study of courier service operations and would undoubtedly control this petition. CTA is concerned with the "NOS" description Advanced has tacked on to the NMFC list of items it wishes exempted. It is pointed out that this amended petition dropped the objectionable term "and related items", which caused the Commission to cancel the exemption previously granted Advanced for medical and dental supplies, because it was too broad a category, substituting the NOS description which is subject to the same objection. If an exemption is granted CTA believes that it should be done on specifically named items, nothing less. CTA also points out that granting the exemption could result in predatory practices since there are many other carriers transporting various medically related commodities in packages and parcels under rate deviations granted by this Commission. CTA states that we have previously recognized the effect of the competitive advantage an exemption gives a carrier in D.85045^{4/} dated October 28, 1977 wherein we found (Finding 10):

"The exemption held by Capital (Parcel Delivery Service Co.) is susceptible of the abuse referred to in Aaronson."^{5/}

and stated on mimeo. page 4 of said decision:

"It is apparent that if the authority sought by Aero Speed is granted Capital could again reduce its rates if its present exemption is not modified. This situation if allowed to continue places Aero Speed and other competitors of Capital at a competitive disadvantage."

4/ A.55472 - Aero Speed Mail Service, Inc., and C.5432, OSH 861.

5/ "Protestant California Trucking Association, Inc....contends that exemptions, such as sought here, provide a carrier with an unfair advantage in the solicitation of freight from shippers." (J. S. Aaronson (1961) 58 CPUC 533.)

CTA questions Advanced's cost figures, pointing out that they are merely lump-sum hourly figures with no breakdown or other necessary detail to determine their validity. It is pointed out that Advanced uses owner-operated vehicles for which no costs have been provided. CTA refers us to our Resolution No. TS-284 dated January 24, 1978, of which we take official notice, wherein we require that subhaulers (owner-operators) join with an applicant and provide their own costs where a deviation from the minimum rates is sought; that in the absence of these costs the Commission has stated:

"As a matter of policy the Commission has required that subhaulers be paid 100 percent of the authorized rates in Section 3666 proceedings when revenue and expense data of subhaulers are not submitted. This requirement was intended to prevent abuses of Section 3666 authorities through the excessive use of subhaulers." Trails Trucking, D.87345 dated 5/17/77 in A.56520 reaffirmed Burton Truck and Transfer Co., D.87593 dated 7/12/77 in A.56824.

Finally CTA refers us to our investigation into overlying/underlying carrier relationships and to General Order No. 130, Part 3 - Regulation of Leasing To Carriers From Noncarriers and Paragraph F.2 of the Order which requires that a copy of the lease be filed with the Commission within five days after execution. We shall take official notice of these items since petitioner introduced a copy of its lease (Exh. A-2).

Discussion

Should medical and dental supplies, as requested by Advanced, be exempted from minimum rate regulation? Our answer to

this essential issue is no. We recently completed an investigation to determine what commodities should be exempted from minimum rate regulation in connection with courier service.^{6/} It appears to us that if there is a public need for courier-type transportation of medical and dental supplies, such need would have manifested itself in our investigation and during the rehearing on D.86378 wherein we added business records and medical specimens to the list of exempt commodities contained in Items 41 and 42 of Minimum Rate Tariff 2 (MRT 2).

As will be shown, our answers to the five issues raised by the parties will also demonstrate that medical and dental supplies should not be given an exempt status. First, it has not been shown that there is a regular need for emergency handling of medical and dental supplies. Advanced's argument that some of these items are used by doctors and hospitals in emergency situations and that inventories are kept so low that there is a daily requirement for courier-type service to keep sufficient stock on hand does not convince us that these items cannot be and are not being handled satisfactorily in ordinary freight or parcel delivery service. Advanced produced only its opinion that there is a need for the exemption of medical and dental supplies from regulation. Although Advanced did handle such items in courier service during the short period it had an exemption for these items, according to its own witness, the business was developed after the authority was acquired, thus demonstrating whatever need, if any there was, had to be developed.

^{6/} D.89004, dated 8/5/78 in C.5432, OSH 922.

CTA asks us to take official notice of our publication entitled "List of Carrier Deviations and Exemptions Concerning Minimum Rates and C.O.D. Requirements", which we do. It is noted that while CTA testified that there are a number of outstanding deviation authorities involving medical and dental supplies we have examined the current listing and find there are 11 carriers with authority to deviate from the minimum rates for the transportation of commodities involving some or all of those which might be classified as medical or dental supplies. We also note that there are 20 carriers with exemptions for shipments weighing 100 pounds or less. Yet Advanced would have us believe that there is no competition in this area and should therefore find there would be no diversion of traffic.

Advanced's amendment of its petition to delete the objectionable phrase "and related items" and the substitution of "Medical and Dental Supplies NOS" is a difference without a distinction. As CTA argues, the substituted description is subject to the same infirmity as the first description in that it is too broad. It is also pointed out that the NMFC does not contain an NOS item under the general heading of "Dental or Hospital Supply Group", resulting in giving overly broad and vague coverage by such a description. Without a specificity of items exempted questions would arise whether or not a particular item fell within the exemption and would lead to uncertainty and confusion, thus providing a basis for discrimination. ✓

As to whether the proposed transportation would be compensatory is not reasonably determinable from the evidence. The only costs provided are lump-sum figures which appear to be estimates, although Advanced had at least three months' experience in handling medical and dental supplies in courier service as an exempt commodity. The vast majority of vehicles used by Advanced are owner-operated under a lease to Advance. The owners are also part-time employees of Advanced. No costs of these owner-operators were submitted. CTA argues that we should require Advanced to submit

the costs of its owner-operators as is required by our Resolution No. TS-284.^{7/} The guidelines set forth in the Resolution do not pertain to the transportation of exempt commodities. We do not believe that the guidelines should be extended and made a requirement, particularly Paragraph 15, for the exemption of a commodity from minimum rate regulation. Furthermore, this petition is not the vehicle with which to broaden the application of Resolution No. TS-284 since affected carriers would have had no notice or opportunity to be heard on the matter. We, therefore, give no weight to this part of CTA's testimony and argument.

On the other hand, we can give little or no weight to Advanced's self-serving statements and unsupported costs and profitability of the proposed operations.

^{7/} Resolution adopting a guide to filing initial applications and renewals for authority to assess less than a maximum reasonable rate under the provisions of Section 452 or less than minimum rates under Sections 3666 and 5195 of the Public Utilities Code.

"15. If authority is sought to utilize subhaulers to transport the commodity at a lesser rate or charge than that sought by the applicant, the following facts and statements must be submitted and joined with the filing of the application:

- "A. Name of subhauler(s) as registered with Commission.
- "B. Permit number(s) of subhauler(s).
- "C. Current address(es) of subhauler(s).
- "D. A detailed financial statement from each subhauler showing its total gross revenues and expenses for the last fiscal year (a profit and loss statement), and a balance sheet.
- "E. A detailed financial statement from each subhauler showing its total revenues and expenses in performing the transportation for the prime carrier for the last fiscal year and the subhauler's projected revenues and costs for the specific transportation sought under this application."

Findings of Fact

1. There has been no showing that the transportation of medical and dental supplies is of such urgency that it requires courier-type service.

2. There has been no showing that users' inventories of medical and dental supplies are such that immediate replenishment is necessary.

3. Medical and Dental Supplies NOS is a too broad and vague description.

4. Numerous highway carriers have been authorized to transport medical and dental supply items under Section 3666 of the Public Utilities Code at less than the minimum rates.

5. Numerous highway carriers have been granted exemptions for shipments weighing less than 100 pounds.

6. It has not been shown that medical and dental supply shipments are inhibited by being transported under normal and ordinary transportation conditions.

7. There is insufficient evidence with respect to the costs of the proposed operation.

8. Advanced's drivers are part-time employees using their own vehicles, under a lease arrangement, to perform courier-type transportation for Advanced.

Conclusions of Law

1. Medical and dental supplies should not be exempted from regulation.

2. The petitions should be denied.

O R D E R

IT IS ORDERED that Petition No. 935 in C.5432, Petition No. 298 in C.5439, and Petition No. 379 in C.5441 are denied. ✓

The effective date of this order shall be thirty days after the date hereof.

Dated at San Francisco, California, this 27th day of FEBRUARY, 1979.

John E. Conner
President
George L. Sturgeon
Richard D. Gault
Philip J. ...
...
Commissioners

Appendix A
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NATIONAL MOTOR FREIGHT CLASSIFICATION 100-C

Item	ARTICLES	CLASSES		MW
		LTL	TL	
56400	DENTAL OR HOSPITAL SUPPLY GROUP: articles consist of Dental, Hospital, Medical or Surgical Supplies, as described in items subject to this grouping			
56420	Air Conditioning Apparatus, portable, with complement of oxygen administering apparatus, including bed tent, in boxes	100	70	24.2
56440	Apparatus, gas or oxygen administering, in boxes or crates	125	85	12.2
56460	Back Rest, invalids', folded, in boxes	100	60	20.2
56470	Bandages, elasticized fabric, in boxes	85	55	24.2
56480	Bandages or Dressings, dentists', physicians', or surgeons', NOI, see Notes, items 56482 and 56784, in boxes	100	55	24.2
56482	NOTE—TL provisions will also apply on dentists', physicians' or surgeons', or nursing accessories classed in the specific or general description therefor at not higher than Class 85 LTL, or Class 55 TL, in mixed TL with dentists', physicians' or surgeons' bandages or dressings.			
56490	Bandages or Splints, plaster of Paris combined with cloth, in boxes	70	40	30.2
56500	Baskets or Hampers, ambulance, in packages	200	85	12.2
56520	Bottles, specimen, plastic, capacity not exceeding 2 ounces, in pulpboard cans with metal ends, in boxes	85	85	AQ
56540	Chests, X-ray film, sheet steel, lead lined, in wooden boxes	85	55	24.2
56560	Containers, blood collecting, glass, less than 1/2 pint capacity, with or without stoppers, empty, see Note, item 56562, in boxes	70	35	30.2
56562	NOTE—Also applies on accompanying accessory bleeding sets, needles, needle guards, adapters, or holders with or without needles attached. The total weight of such named accessory articles must not exceed 10 percent of the weight upon which charges are assessed.			
56600	Crutches, in packages	100	55	24.2
56620	Dental Cement, in boxes	110	85	12.2
56640	Dental Goods, NOI, in boxes	100	70	20.2
56660	Dental Impression Compound, in barrels or boxes. See item 60000 for classes dependent upon agreed or released value	85	55	24.2
56680	Dental, Medical or Surgical Instruments, NOI, in boxes	150	100	10.2
56700	Dental Investment Compound, or Dental Plaster, suitable for making casts or molds:			
Sub 1	In containers in barrels or boxes, or in metal cans in wirebound crates	65	35	36.2
Sub 2	In bulk in five-ply paper bags, barrels or steel pails	60	35	40.2
56710	Drapes, Sheets, Pillow Cases, Gowns, Leggings or Towels, surgical or clinical, disposable, produced from cloth or fabric consisting of fibre, yarn or mesh laminated between sheets of cellulose or paper, in boxes:			
Sub 1	With accessories, see Note, item 56712	77 1/2	45	24.2
Sub 2	Without accessories	70	40	30.2
56712	NOTE—Applies when packages contain other articles (other than surgical instruments) providing the weight thereof does not exceed 10 percent of the weight of the interior packaged drapes, sheets, leggings or towels.			

NATIONAL MOTOR FREIGHT CLASSIFICATION 100-C

Item	ARTICLES	CLASSES		MW
		LTL	TL	
	DENTAL OR HOSPITAL SUPPLY GROUP: subject to item 56400			
56720	Driers, X-ray film, steel, in boxes or crates	85	55	24 2
56740	✓ Droppers, medicine (Eye Droppers), or Medicine Droppers and Bottle Caps combined, rubber and plastic or glass combined, in boxes	85	55	24 2
56750	✓ Electrodes, patient monitoring or testing instrument or device, plastic and metal combined, expendable, in boxes	125	70	18 2
56760	Electro-therapeutic Cabinets or Plates, table or wall, or Electro-therapeutic or Diathermic Instruments or Apparatus, NOI, in boxes, crates, or Package 1066	100	70	20 2
56770	Hydrotherapy Baths, see Note, item 56772, in boxes or crates:			
Sub 1	Tank capacity not exceeding 7 cubic feet	92 1/2	55	24 2
Sub 2	Tank capacity exceeding 7 cubic feet	125	85	15 2
56772	NOTE Applies only on articles having a tank and one or more water agitators, ejectors or aerators, with or without accompanying water mixing valve assemblies, tank fixtures or fittings, head rests, hammocks, body plinths, hand grips, arm rests, hoists or trolleys, slings or support fixtures			
56780	✓ Kits, first aid, see Notes, items 56782 and 56784, in boxes	85	55	24 2
56782	NOTE Will not apply on first aid kits containing surgical instruments, cocaine, codeine, heroin, morphine, opium nor other narcotics			
56784	✓ NOTE Packages of bandages, dressings or first aid kits may contain the following articles not to exceed 5 percent of the total weight of the shipment:			
	Adhesive plaster racks, Gauze racks,			
	Aprons, paper pinafores, bracket table covers and drawer liners used by dentists, physicians or surgeons, Head rest covers,			
	Druggists' towels, Operating room caps,			
	First aid books or charts, Rubber sheeting,			
	Sputum cups or holders,			
56800	Life Saving Apparatus, oxygen, in boxes	150	85	12 2
56820	Limbs, artificial, in boxes	300	200	10 2
56830	Livestock Castrators or Emasculators, hand pincer type, in boxes	85	55	30 2
56833	Machines, surgical suturing or stapling, in boxes	150	100	12 2
56835	✓ Pads or Swabs saturated with rubbing alcohol, in moisture-proof inner containers, in boxes	70	45	24 2
56840	Pumps, suction or pressure, with or without appliances for drainage or other treatment of body cavities, in boxes	100	85	12 2
56860	Respirators, mechanical, in boxes or crates	110	70	20 2
56880	Safes, X-ray film, cast iron, in boxes	85	55	24 2
56900	✓ Sets, expendable, aspirating, administration or transfusion, plastic, with empty plastic collecting or holding containers, or without containers, in boxes	100	70	20 2
56910	Sets, oxygen administration, consisting of oxygen in steel cylinders not over 240 cubic inches capacity, plastic tubing and plastic administering mask, with or without regulators, in boxes	70	50	30 2
56920	Stretchers, ambulance or hospital (Litters):			
Sub 1	Other than wheeled			
Sub 2	SU, not nested, in packages	200	100	10 2
Sub 3	SU, nested, in packages	100	55	20 2
Sub 4	KD, in packages	85	55	20 2
Sub 5	Wheeled			
Sub 6	SU, in boxes or crates or Package 2233	200	85	12 2
Sub 7	KD, in boxes or crates or Package 2233	150	85	12 2
56950	✓ Swabs, wood, paper or plastic and cotton or synthetic fibre combined, not medicated, in boxes	70	37 1/2	30 2
56960	✓ Syringes, expendable administration, plastic with or without needles, in boxes	100	70	14 2
56970	✓ Tape, adhesive, in roll form in inner containers in boxes	77 1/2	45	30 2
56980	✓ Tongue Depressing Blades or Swab Applicators, wood, paper or plastic, in boxes	70	37 1/2	30 2
57000	✓ Trusses, surgical, in boxes	150	85	12 2
57020	✓ Vaporizers, other than electric, with or without medicine, in boxes	100	70	30 2
57040	✓ Violet Ray Machines, in boxes	200	85	12 2
57050	Walkers, tubular metal wheeled or not wheeled, in boxes			
Sub 1	SU	300	200	AC
Sub 2	KD	200	200	AC
Sub 3	AD	175	175	AC