

SERVED: January 26, 2005

NTSB Order No. EA-5135

UNITED STATES OF AMERICA
NATIONAL TRANSPORTATION SAFETY BOARD
WASHINGTON, D.C.

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD
at its office in Washington, D.C.
on the 24th day of January, 2005

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MARION C. BLAKEY,)	
Administrator,)	
Federal Aviation Administration,)	
)	
	Complainant,)	
)	
	v.)	Docket SE-17251
)	
MARTIN REYNOLDS,)	
)	
	Respondent.)	
)	
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OPINION AND ORDER

The respondent has appealed from the December 21, 2004, oral initial decision and order of Administrative Law Judge Patrick G. Geraghty,¹ which affirmed the Administrator's emergency revocation of respondent's airline transport pilot (ATP) and medical certificates based on his alleged falsification of three applications for medical certificates. The Administrator's emergency order cited 14 *Code of Federal Regulations* (FARs)

¹ A copy of the initial decision, an excerpt from the hearing transcript, is attached.

§§ 67.403(a)(1) and (b)(1).² As further discussed below, we deny respondent's appeal and affirm the law judge's decision.

The November 23, 2004, emergency order of revocation alleged, in part, the following facts and circumstances:

2. On or about October 1, 2001 through on or about January 16, 2002, your Florida Driver's license was suspended four times:
 - a. Suspension - October 1, 2001 - Seat Belt Violation - Florida
 - b. Suspension - October 1, 2001 - Failure to Display Driver's License - Florida
 - c. Suspension - October 4, 2001 - Failure to Yield Right of Way - Florida
 - d. Suspension - January 16, 2002 - Improper Turn - Florida
3. On or about January 16, 2002, you applied for and were issued a FAA First Class Medical Certificate.
4. On or about April 18, 2002 through on or about June 3, 2002, your Florida Driver's license was suspended four more times:
 - a. Suspension - April 18, 2002 - Operating Motor Vehicle Without Driver's License - Florida
 - b. Suspension - April 18, 2002 - Improper Equipment - Florida
 - c. Suspension - June 3, 2002 - Driving While License Suspended - Florida
 - d. Suspension - June 3, 2002 - Operating Motor Vehicle With Improper Tag - Florida

² **§ 67.403 Applications, certificates, logbooks, reports, and records: Falsification, reproduction, or alteration; incorrect statements.**

(a) No person may make or cause to be made --

(1) A fraudulent or intentionally false statement on any application for a medical certificate...;

* * * * *

(b) The commission by any person of an act prohibited under paragraph (a) of this section is a basis for --

(1) Suspending or revoking all airman, ground instructor, and medical certificates and ratings held by that person...

5. On or about February 20, 2003, you pled nolo contendere and were found guilty of Driving While License Suspended and Operation Without a Valid Driver's License in Broward County, FL. You were credited with two days of jail time served.
6. On or about March 3, 2003, you applied for and were issued an FAA Second Class Medical Certificate.
7. On or about May 27, 2003 through on or about November 12, 2003, your Florida driver's license was suspended three more times:
 - e. Suspension - May 27, 2003 - Failure To Pay Traffic Fine - Florida
 - f. Suspension - October 23, 2003 - Failure To Pay Traffic Fine - Florida
 - g. Suspension - November 12, 2003 - Failure To Pay Traffic Fine - Florida
8. On or about April 28, 2004, you applied for and were issued an FAA Second Class Medical Certificate.
9. On each of the medical certificate applications referenced above, you answered in the negative to Question 18.v, regarding past administrative actions, which "resulted in the denial, suspension, cancellation, or revocation of driving privileges..."
10. You signed each of the three medical certificate applications referenced above with your signature below the statement, "I hereby certify that all statements and answers provided by me on this application form are complete and true to the best of my knowledge, and I agree that they are to be considered part of the basis for issuance of any FAA certificate to me."

Respondent admitted all of the above allegations, except that he denied the driver's license suspensions listed in paragraphs two and four were a result of the accompanying traffic violations.³ Specifically, although he admitted those traffic violations occurred, he denied that the suspensions were a direct

³ Respondent admitted that the suspensions listed in paragraph seven were properly attributed to the accompanying violations (i.e., that they were imposed for failures to pay traffic fines). The traffic violations for which these fines were imposed are not documented in the record.

result. Rather, he asserted they were imposed as a result of his failure to pay the associated fines or make the associated court appearances.⁴

At the hearing, respondent testified that he believed question 18.v sought information only about alcohol or drug-related convictions. (Tr. 47-8.) He stated this belief was based on his understanding of the language of the question, the instruction sheet, the FARs, and answers provided by aviation medical examiners in the past when he asked whether the question was intended to cover traffic convictions other than those that were drug or alcohol related. (He testified that they answered it was not.)⁵ Respondent testified that he did not view the suspensions of his driving privileges as reportable events, again stating that he thought the term "administrative actions," referred only to drug or alcohol-related offenses.

The law judge rejected respondent's testimony, finding that even if the suspensions were imposed for failure to pay traffic fines or for not appearing in court, all of the fines were nonetheless ultimately imposed for motor vehicle offenses. He held that respondent clearly had a "history of administrative

⁴ Respondent's certified driving record shows that one of the suspensions imposed on April 18, 2002, and the two suspensions imposed on June 3, 2002, were imposed because he, "failed to appear on traffic summons." The remaining eight suspensions were imposed because he, "failed to pay traffic fine (penalty)."

⁵ As discussed later in this decision, such advice would have been incorrect and is unsupported by the language of the question or the instructions.

actions involving an offense, which resulted in suspension" of his driving privileges, and that those administrative actions were required to be reported in response to question 18.v. (Tr. 68.) He also stated that Board case law establishes that an applicant's answer to this question on the medical application is material. Finally, the law judge noted that respondent had qualified for an ATP certificate as well as an Airframe & Powerplant (A&P) certificate⁶ and, therefore, was not "someone who is improperly educated" or who could not "interpret the English language." (Tr. 70.) Accordingly, he concluded that respondent had made knowingly false statements on his medical applications when he marked "no" to question 18.v. (Tr. 72.)

In his appeal brief, respondent challenges the law judge's findings on each of the elements of intentional falsification.⁷ First, he reiterates the argument that his "no" answers to question 18.v were not false because the suspensions of his driving privileges did not directly result from operational violations but rather from failure to pay fines (albeit fines imposed for operational violations) and, therefore, did not constitute reportable "administrative actions" within the meaning of the medical form. Second, he notes that the Administrator

⁶ Respondent's A&P certificate was revoked in 1995 for falsification of maintenance records. (See Emergency Order of Revocation p. 4 and Tr. 51.)

⁷ The elements of an intentionally false statement are: (1) a false representation; (2) in reference to a material fact; (3) made with knowledge of its falsity. Hart v. McLucas, 535 F.2nd 516, 519 (9th Cir. 1976).

presented no evidence at the hearing on materiality, and asserts that his failures to pay traffic fines are immaterial to the FAA's determination of his medical qualifications. And third, he argues that question 18.v, particularly the phrase "administrative action," is too confusing and vague to adequately notify applicants of what should be reported.⁸

Respondent does not ask for reversal of the law judge's initial decision; rather, he asks us to remand the case to the law judge, "to dispose of those issues left open." (Respondent's Brief at p. 9.) However, no such remand is necessary because, as discussed below, we find that each of the elements of intentional falsification is adequately addressed by the law judge's decision and supported by the record.

1. Falsity.

Question 18.v on the FAA's medical application, titled "Conviction and/or Administrative Action History," asks applicants to report whether they have a:

History of (1) any conviction(s) involving driving while intoxicated by, while impaired by, or while under the influence of alcohol or a drug; or (2) history of any conviction(s) or **administrative action(s) involving an offense(s) which resulted in the denial, suspension, cancellation, or revocation of driving privileges** or which resulted in attendance at an educational or a rehabilitation program. [emphasis added.]

Respondent's contention on appeal that the language only covers suspensions of driving privileges resulting directly from operational violations is unpersuasive. The plain language of

⁸ The Administrator has filed a reply brief.

this question requires reporting of any administrative action, "involving an offense" resulting in suspension of driving privileges. Regardless of whether we regard the suspensions as resulting from respondent's original traffic offenses or his subsequent "offense" of failing to pay the associated fines, it is evident that the language on its face embraced respondent's suspensions. Moreover, the law judge as a matter of credibility rejected respondent's position that he thought the question was targeted only at drug or alcohol-related offenses. Thus, respondent's negative answer was false.

2. Materiality.

It is well-established that an incorrect answer on a medical application constitutes prima facie proof of intentional falsification. Administrator v. Manin, NTSB Order No. EA-4303 (1994), at 3, citing cases (by introducing the medical application and the record of conviction, the Administrator presented sufficient prima facie proof of the violation). Thus, an applicant's answer to all questions on the application are material. The information sought in question 18.v about an applicant's history of convictions and administrative actions may be evidence of, among other things, certain medically-disqualifying personality disorders.⁹

Respondent's position appears to be premised on the contention that, because his underlying traffic offenses were

⁹ See Administrator v. Daughenbaugh, 4 NTSB 767 (1983); Administrator v. Allanson, 4 NTSB 564 (1982); Administrator v. Sumrall, 3 NTSB 953 (1978).

"minor," neither they nor the resulting fines and suspensions were of any relevance to his medical qualifications. We do not agree. Assuming for the sake of argument that some of the underlying violations could fairly be called "minor," we note that at least one of respondent's traffic citations was for driving while his license was suspended and apparently resulted in his serving time in jail. We do not view this as a "minor" infraction. Nor are we convinced that respondent's multiple failures to pay traffic fines or make required court appearances are insignificant "offenses" that have no potential relevance to the FAA's determination of his qualifications for certification. More importantly, the determination of relevance should be made by the FAA, not respondent.

In sum, we hold that respondent's false answer to question 18.v was material.

3. Knowledge.

The law judge correctly noted that the third requirement of an intentional falsification charge is that the statements must have been made "with knowledge of their falsity." (Tr. 62.) Therefore, his finding on this element necessarily hinged on respondent's understanding of what information the question was intended to elicit. In this regard, respondent's testimony that he understood the question to be aimed only at drug and alcohol-related offenses, "and not minor traffic violations [or] suspensions" (Tr. 48), was unconvincing. Respondent does not repeat this argument in his appeal brief. Instead, he focuses on

the argument that his driving privileges were suspended only for failure to pay fines, not for the underlying traffic violations and acknowledges that license suspensions directly resulting from moving violations are required to be reported in response to question 18.v. (Respondent's brief at pp. 7-9.)

Accordingly, respondent now apparently concedes that he understood that the question could cover more than just drug and alcohol offenses. Such an understanding would be consistent with the instructions for question 18.v, which specifically mention license suspension for "multiple speeding convictions" as an example of a reportable offense.¹⁰ Respondent acknowledged that he "read the instructions for 18.v" (Tr. 48) and even asked for guidance in the past regarding the scope of conviction information sought by this question, suggesting that he had carefully read and analyzed the language in that question.

Respondent did not claim at the hearing or in his brief that

¹⁰ The instruction page that is part of the medical application (and to which the applicant is referred in question 18.v), provides, in part, the following explanation and guidance:

Conviction and/or Administrative Action History -

* * * * *

If "yes" is checked, a description of the conviction(s) and/or administrative action(s) must be given in the EXPLANATIONS box. The description must include: (1) the alcohol or drug offense for which you were convicted or the type of administrative action involved (e.g., attendance at an alcohol treatment program in lieu of conviction; **license denial, suspension, cancellation, or revocation for refusal to be tested; educational safe driving program for multiple speeding convictions; etc.**); (2) the name of the state or other jurisdiction involved; and (3) the date of the conviction and/or administrative action. [emphasis added.]

he was unaware of his 11 driver's license suspensions. Indeed, the record indicates that he was notified, as required by law, prior to each of the suspensions. In addition, the citation he was issued on January 23, 2002, for driving while his license was suspended notes that respondent's license had been "suspended 4X w/knowledge." Presumably, respondent was also made aware of his prior suspension(s) when he was jailed for that offense.

In any event, when the law judge concluded that respondent "knowingly made a false statement" when he answered "no" to question 18.v, he thereby rejected respondent's testimony to the extent that he denied such knowledge. As noted above, in reaching this conclusion, the law judge mentioned respondent's history in aviation and his apparent ability to understand the requirements for achieving other aviation certifications.¹¹ We agree that the record in this case supports a finding that respondent understood the import of the question,¹² and knew that his answer to the question was false.

¹¹ Respondent testified he has been involved in aviation for 26 years, served in the Air Force and Air National Guard, and worked as a maintenance crew chief and flight engineer. He also obtained an A&P certificate, a commercial pilot certificate, and ATP certificate, and a Part 135 certificate. We note also that, according to his April 3, 2003, medical application, he was employed as a pilot for Air Florida. (Exhibit A-3.)

¹² We do not agree with respondent that the term "administrative action" is confusing or vague. However, we further note that a precise understanding of this term should not be necessary to recognize that suspensions such as respondent's should be reported in response to question 18.v.

ACCORDINGLY, IT IS ORDERED THAT:

1. Respondent's appeal and request for a remand is denied;
and
2. The law judge's initial decision is affirmed in its
entirety.

ENGLEMAN CONNERS, Chairman, ROSENKER, Vice Chairman, and CARMODY, HEALING, and HERSMAN, Members of the Board, concurred in the above opinion and order.