

SERVED: July 20, 2009

NTSB Order No. EA-5463

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 14th day of July, 2009

J. RANDOLPH BABBITT,)	
Administrator,)	
Federal Aviation Administration,)	
)	
Complainant,)	
)	Docket SE-18533
v.)	
)	
PIERRE G. BOURSSE,)	
)	
Respondent.)	
)	

OPINION AND ORDER

Respondent appeals the oral initial decision of Administrative Law Judge William A. Pope, II, issued April 2, 2009.¹ By that decision, the law judge determined that the Administrator proved that respondent had violated 14 C.F.R.

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

§ 67.403(a)(1).² The law judge ordered revocation of respondent's private pilot and second-class medical certificates, as well as any other airman certificates that respondent holds. We deny respondent's appeal.

The Administrator issued the emergency revocation order,³ which became the complaint in this case, on March 9, 2009. The complaint alleged that respondent submitted an application for an airman medical certificate to an aviation medical examiner (AME) on November 3, 2008, and that respondent certified that all the information he provided on the application was complete and true. The Administrator's complaint stated that, as a result of this certification, respondent received a second-class medical certificate. However, the complaint alleged that respondent falsified his response to question 18v on the application, in which respondent answered "Yes" to the following question:

² The pertinent portion of section 67.403(a)(1) prohibits a person from making fraudulent or intentionally false statements on an application for a medical certificate.

³ Respondent subsequently waived the expedited procedures normally applicable to emergency proceedings. We also note that respondent filed a motion for dismissal and, in the alternative, for rehearing before submitting his appeal brief. We deny respondent's motion to dismiss as moot, because the motion merely contains arguments that respondent proffered in his appeal brief. We also find that the issues central to this case have been fully briefed by the parties, and that oral argument is not necessary. See 49 C.F.R. § 821.48.

HAVE YOU EVER IN YOUR LIFE ... HAD ANY OF THE FOLLOWING?
... Convictions and/or Administrative Action History,
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
denial, suspension, cancellation, or revocation of
driving privileges, or which resulted in attendance at
an educational or rehabilitation program.

The Administrator's order alleged that respondent indicated "previously reported" in the explanation box below the question, but that this answer was not correct because respondent did not disclose his most recent driver's license suspension, which occurred on June 21, 2008. The order stated that the Administrator had relied upon respondent's answer to question 18v in issuing respondent his certificate, and that respondent's answer was fraudulent or intentionally false.

At the hearing, the Administrator's counsel called FAA Special Agent Shawn Grisham to testify. Mr. Grisham stated that he investigated respondent's alleged falsification, and determined that, when respondent included the phrase "previously reported" on his November 3, 2008 application, he was referring to his 2003 driver's license suspension, rather than the suspension that arose out of the June 2008 violation, because respondent had not previously reported the June 2008 violation. Mr. Grisham testified that, according to the instructions that accompany the application, "if there had been a change in any

condition since the previous medical application," then an applicant's inclusion of the phrase "previously reported" on the application would not be in compliance with the instructions. Tr. at 23. Mr. Grisham further stated that AMEs who review the medical certificate applications do not have access to FAA records, but instead rely on the information that applicants include on the applications in determining an applicant's eligibility for a certificate.

Charles P. Nicholson, Jr., the AME who issued respondent the certificate, also testified. Dr. Nicholson stated that, if he had known that respondent had two separate motor vehicle violations that resulted in the suspension of his driver's license, he would not have issued the certificate to respondent. Dr. Nicholson stated that he did not recall respondent discussing the June 2008 suspension with him. Dr. Nicholson stated that, when he saw the phrase "previously reported" on the application, he thought that it only referred to the first incident, which respondent had discussed with him and reported in 2006.

In response to the Administrator's case, respondent testified that he has an attitude of compliance with the Federal Aviation Regulations. Respondent stated that he reported the June 2008 motor vehicle violation to the FAA Security Division within 60 days, after which the FAA sent him a letter that

stated, "when completing your next application for airman medical certificate, please review question 18v regarding conviction and/or administrative actions and follow instructions in answering the question," and that, "this would include the definition of motor vehicle actions." Tr. at 67; Exh. A-6. Respondent stated, however, that he did not read this correspondence until 4 days prior to the hearing, because he does not regularly open his mail. Respondent admitted that he was careless in completing the 2008 application, and that he did not recall ever reading the instructions that accompany the application. Respondent introduced into evidence e-mail correspondence that he had with Mr. Grisham, in an attempt to indicate that respondent had a compliant attitude (Exh. R-7); respondent further testified that Mr. Grisham recommended that respondent undergo another examination with an AME. Respondent also stated that Dr. Nicholson told him that, because respondent reported the most recent motor vehicle action to the FAA Security Division within 60 days, he was not required to list the action on the medical certificate application.

In rebuttal, the Administrator again called Mr. Grisham to testify. Mr. Grisham stated that he did not have a conversation with respondent in which he recommended that respondent undergo another medical examination and resubmit his application. Mr. Grisham testified that the Administrator's policy concerning

investigations into suspected violations precludes agents from recommending that an applicant take any specific action.

At the conclusion of the hearing, the law judge summarized the evidence and determined that the Administrator had sufficiently proven that respondent violated 14 C.F.R. § 67.403(a)(1), as charged. The law judge stated that he did not find respondent's testimony credible, and rejected respondent's defenses that the instructions were confusing, that he did not intend to make a false statement on the application, and that he believed it was sufficient that he had reported the violation to the FAA Security Division within 60 days. The law judge found that respondent knew in 2006 that he had to report the motor vehicle violations in the explanation box on his 2006 application, and that the idea that respondent somehow forgot that requirement 2 years later on his 2008 application was not credible. The law judge concluded that revocation was the appropriate sanction for respondent's falsification.

On appeal, respondent asserts that the law judge erred in applying what respondent termed "a strict liability standard" with regard to falsification. Respondent also contends that the terms of respondent's 2006 settlement agreement with the Administrator regarding the 2003 motor vehicle violation indicated that respondent's use of the phrase "previously reported" was appropriate, because the phrase meant that he had

reported the violation to the FAA Security Division. In particular, respondent asserts that the language of question 18v is ambiguous, that he could not have known how to report his most recent offense on the application, and that he was justified in presuming that his report to the FAA Security Division was sufficient. Respondent also argues that the law judge erred in not allowing Dr. Nicholson to testify concerning the settlement agreement, because such testimony would be relevant to respondent's state of mind in completing the application. The Administrator opposes each of respondent's arguments, and urges us to affirm the law judge's decision. In the reply to respondent's appeal brief, the Administrator also notes that respondent did not provide evidence of the 2006 settlement agreement at the hearing, and only now has offered correspondence concerning the agreement into evidence.

With regard to the issue of falsification of a medical application, we have long adhered to a three-prong standard to prove a falsification claim; in this regard, in intentional falsification cases, the Administrator must prove that a pilot (1) made a false representation, (2) in reference to a material fact, (3) with knowledge of the falsity of the fact.⁴ We have also held that a statement is false concerning a material fact

⁴ Hart v. McLucas, 535 F.2d 516, 519 (9th Cir. 1976) (citing Pence v. United States, 316 U.S. 332, 338 (1942)).

under this standard if the alleged false fact could influence the Administrator's decision concerning the certificate.⁵ In McGonegal and Reynolds, supra, we stated that an applicant's answers to all questions on the application are material.

In the case at issue, the evidence establishes that respondent's driver's license was first suspended in 2003 after a motor vehicle violation involving alcohol. The evidence further indicates that respondent's license was again suspended after he was stopped in a routine traffic stop in June 2008 and found to be driving under the influence of alcohol. The evidence also establishes that, less than 6 months later, respondent completed an application for an airman medical certificate, on which he indicated that he had "previously reported" a suspension of his driver's license. The law judge considered this evidence and applied the three-prong falsification standard in finding that respondent had violated § 67.403(a)(1); respondent's argument that the law judge applied an inappropriate "strict liability" standard is erroneous. Moreover, respondent's attempt to justify his answer to question 18v on his application by stating that the question is ambiguous and would not require him to report the latest suspension is

⁵ Administrator v. McGonegal, NTSB Order No. EA-5224 at 4 (2006); Administrator v. Reynolds, NTSB Order No. EA-5135 at 7 (2005); see also Janka v. Dep't of Transp., 925 F.2d 1147, 1150 (9th Cir. 1991).

unavailing, as we have previously held that failure to read questions on the medical application carefully enough to supply accurate answers is not a basis to dispute a charge of intentional falsification.⁶ In addition, respondent received specific instructions directing him to review carefully the instructions regarding question 18v on the medical application, even though respondent contends that he did not see these instructions because he did not open his mail. Overall, respondent's argument that he did not know that he must report his most recent suspension on the application is not persuasive. Respondent knew that his North Carolina driver's license had recently been suspended when he submitted the application, and his failure to indicate such on the application amounts to falsification under the three-prong standard described above.

Respondent's contention that the law judge erred in not allowing testimony concerning the 2006 settlement agreement is similarly unavailing. First, we note that we have long held

⁶ In Administrator v. Boardman, NTSB Order No. EA-4515 at 8-9 (1996), for example, we stated that the respondent's failure to consider question 18w on a medical application carefully before providing an answer did not establish a lack of intent to provide false information, and that we were not persuaded by the respondent's contention that the fact that he had informed his employer of the impending conviction indicated his lack of an intent to keep anyone from learning of the conviction. See Administrator v. Sue, NTSB Order No. EA-3877 at 5 (1993) (stating that, "the two questions about traffic and other convictions are not confusing to a person of ordinary intelligence").

that we review law judges' evidentiary rulings under an abuse of discretion standard,⁷ and that we allow law judges significant discretion in overseeing hearings.⁸ Overall, we have held that we will entertain evidentiary questions only when they amount to prejudicial error.⁹ Moreover, an error is considered *prejudicial* when it "actually [affects] the outcome of the proceedings." United States v. Hastings, 134 F.3d 235, 240 (4th Cir. 1998). Given this precedent, we will review arguments regarding evidentiary rulings to determine whether the law judge has abused his broad discretion, and whether the alleged error resulted in prejudice against the party who claims harm as a result of the ruling.

Respondent's argument that the law judge erred in halting testimony concerning the 2006 settlement agreement is not persuasive, as respondent has not established that such testimony would have altered the disposition of the case.

⁷ See, e.g., Administrator v. Raab, NTSB Order No. EA-5300 at 9-10 (2007); Administrator v. Zink, NTSB Order No. EA-5262 at 7-8 (2006); Administrator v. Seyb, NTSB Order No. EA-5024 at 5-6 (2003); Administrator v. Van Dyke, NTSB Order No. EA-4883 at 5 (2001).

⁸ See, e.g., Administrator v. Simmons, NTSB Order No. EA-5275 at 9-10 (2007) (citing 49 C.F.R. § 821.35(b)); Administrator v. Reese, NTSB Order No. EA-4896 at n.4 (2001); and Administrator v. Kachalsky, NTSB Order No. EA-4847 at n.4 (2000)).

⁹ See generally Administrator v. Blair, NTSB Order No. EA-4253 at 7 n.10 (1994) (stating that the law judge had improperly excluded evidence, but that the error was harmless).

Respondent's contention that Dr. Nicholson could have offered testimony indicating respondent's state of mind is incongruent, as respondent himself is the best witness to testify regarding his own state of mind. Respondent testified in his defense at the hearing, and clearly stated that he believed it was acceptable for him to include the phrase "previously reported." Tr. at 70. Moreover, respondent's contention that the law judge misstated his testimony and intentionally confused him is also unpersuasive, as respondent has not established how the law judge's questions were prejudicial. We also note that we have carefully reviewed the hearing transcript and find that the law judge did not abuse his discretion in overseeing the hearing.

Based on the foregoing, we find that respondent has violated 14 C.F.R. § 67.403(a)(1).

ACCORDINGLY, IT IS ORDERED THAT:

1. Respondent's appeal is denied;
2. The law judge's decision is affirmed; and
3. The Administrator's emergency revocation of respondent's private pilot and second-class medical certificates, and any other certificates respondent holds, is affirmed.

ROSENKER, Acting Chairman, and HERSMAN, HIGGINS, and SUMWALT, Members of the Board, concurred in the above opinion and order.

UNITED STATES OF AMERICA
NATIONAL TRANSPORTATION SAFETY BOARD
OFFICE OF ADMINISTRATIVE LAW JUDGES

* * * * *

In the matter of:	*	
	*	
LYNN OSMUS,	*	
Acting Administrator,	*	
Federal Aviation Administration,	*	
	*	
Complainant,	*	
v.	*	Docket No.: SE-18533
	*	JUDGE POPE
PIERRE G. BOURSSE,	*	
	*	
Respondent.	*	

* * * * *

Mecklenburg County Courthouse
832 East 4th Street
Courtroom 6350
Charlotte, North Carolina 28207

Thursday,
April 2, 2009

The above-entitled matter came on for hearing
pursuant to notice, at 9:30 a.m.

BEFORE: WILLIAM A. POPE, II,
Administrative Law Judge

APPEARANCES:

On Behalf of the Administrator:

JAMES WEBSTER, ESQ.
U.S. Department of Transportation
Federal Aviation Administration
Mike Monroney Aeronautical Center
P.O. Box 25082, AMC-7
Oklahoma City, Oklahoma 73125
(405) 954-4676

On behalf of the Respondent:

CHRISTOPHER A. HUDSON, ESQ.
Law Office of Christopher A. Hudson
P.O. Box 33877
Charlotte, North Carolina 28233
(704) 338-9161
cahudson@concentric.net

1 ORAL INITIAL DECISION

2 ADMINISTRATIVE LAW JUDGE POPE: The following is my
3 oral initial decision in the matter of the Administrator, Federal
4 Aviation Administration, Complainant, versus Pierre Gene Boursse,
5 Respondent; docket number SE-18533.

6 This is a proceeding under the provisions of 49 USC,
7 Section 44709, formerly Section 609 of the Federal Aviation Act
8 and the provisions of the Rules of Practice in air safety
9 Proceedings of the National Transportation Safety Board. Pierre
10 Gene Boursse, the Respondent, has appealed the Administrator's
11 emergency order of revocation dated March 9th of 2009, which
12 pursuant to Section 821.31(a) of the Board's rules serves as the
13 complaint in which the Administrator ordered the revocation of
14 Respondent's private pilot certificate, second class medical
15 certificate or any other airman's certificate he holds because of
16 alleged violations of FAR 67.403(a)(1) of the Federal Aviation
17 Regulations.

18 In his amended answer to the complaint filed on March 27th,
19 2009, supplemented by the further amended answer to the complaint
20 filed at the hearing, the Respondent admitted paragraphs 1 through
21 4 and denied all other allegations of the complaint. Thus,
22 Respondent has admitted that he is the holder of private pilot
23 certificate alleged in the complaint; that on or about June 21st,
24 2008 his North Carolina driver's license was suspended incident to
25 an alcohol-related 30-day civil revocation offense, that on or

1 about November 3, 2008, he applied for and was issued a second
2 class medical certificate by an aviation medical examiner; and, on
3 the application he answered yes and indicated previously reported
4 to question 18(v) of the medical and violation history, which asks
5 if he ever in his life had any history of conviction/convictions
6 or administrative action/actions involving driving while
7 intoxicated, impaired or under the influence of alcohol or a drug
8 which resulted in the denial, suspension, cancellation or
9 revocation of driving privileges.

10 He denied paragraph 5 of the complaint alleging that he
11 did not in his answer to question 18(v) disclose the June 21st,
12 2008 driver's license suspension. He denied paragraph 6 alleging
13 that the Administrator relied upon the information he provided in
14 response to item 18(v) on the application. He denied paragraph 7
15 alleging that his answer to item 18(v) was wanton or intentionally
16 false. He denied paragraph 8 alleging that incident to paragraphs
17 3 and 4 of the information he provided in response to item 18(v)
18 was material in that an airman medical certificate was issued
19 without consideration of his actions as described in paragraph 2,
20 and he denied that on item 20 of the application form, he
21 certified that all answers were complete and true knowing the
22 entry was false.

23 In his amended answer, the Respondent stated as an
24 affirmative defense that he reported to the FAA, Civil Aviation
25 Security Division, as required, that his North Carolina driver's

1 license had been subject to suspension during the June 2008 time
2 period complained of, and that he responded promptly to Agent
3 Grisham's 12/16/08 letter of investigation; that he had reported
4 by driver's license suspension to the FAA on August 5, 2008. He
5 said Agent Grisham suggested he make a reapplication to his AME
6 and report the suspension on a new application. He stated that he
7 visited Dr. Nicholson on February 9, 2009, and Dr. Nicholson
8 advised him that he did not have to report the suspension.

9 Much of the evidence in this case was in the form of
10 stipulated exhibits. Exhibit A-1 is an application for medical
11 certificate completed by the Respondent on 11/3/08 as to which he
12 certified that all statements and answers are complete and true
13 and to the best of his knowledge. In response to item 18(v), he
14 answered yes, that he had a history of, among other things,
15 administrative actions involving an offense which resulted in the
16 denial, suspension, cancellation or revocation of driving
17 privileges.

18 In the explanation section of 18(v) he stated previously
19 reported. The Respondent admitted in his answer to the complaint
20 that on or about June 21, 2008 his driver's license was suspended
21 by the Division of Motor Vehicles State of North Carolina incident
22 to an alcohol-related 30-day civil revocation offense. The AME
23 was Dr. Nicholson who issued the airman medical certificate.
24 Exhibit A-2 is an application for medical certificate dated
25 November 13th, 2006 in which the Respondent stated in the

1 explanation section of item 18(v), quote, 2003 NC DMV civil
2 administrative driver's license suspension (no conviction, no
3 guilty plea, no contest plea, no adjudication of guilt), end of
4 quote.

5 That was the most recent application for a medical
6 certificate by the Respondent prior to the November 3, 2008
7 application. The Respondent reported the June 21, 2008 civil
8 suspension of his driver's license to the FAA security division on
9 August 5, 2008. There is no dispute that the report was timely.

10 The instructions on the application form for item 18,
11 medical history, state in the explanations box below, you may note
12 previously reported, no change only if the explanation of the
13 condition was reported on the previous application for an airman
14 medical certificate, and there has been no change in your
15 condition.

16 At the beginning of item 18(v) history, the form states:
17 For arrest, conviction and/or administrative history, see
18 instructions page. A-7 is a copy of the instructions page that is
19 attached to an application for airman medical certificate. This
20 is customarily thrown away and not retained after the airman fills
21 out the application and the AME completes his examination.

22 A-7 is taken from another application which was voided.
23 It provides that if yes is checked, a description of the
24 arrest/arrests and/or conviction/convictions and/or administrative
25 action/actions must be given in the explanations box and further,

1 certain other details must also be given.

2 The Respondent testified that he is a businessman in a
3 partnership that owns 65 restaurants and that his relationship
4 with his partners depends on honesty and truthfulness. He has
5 been flying since 2000 and flies 200 to 250 hours a year,
6 primarily in connection with his business. His company operates
7 in eight states.

8 He explained the circumstances of his June 2008 arrest
9 for driving while impaired as he had just left the restaurant
10 where he had consumed alcohol and then was stopped at a police
11 check point and arrested. He said he did not open and read Agent
12 Grisham's acknowledgment dated August 25, 2008, Exhibit A-6,
13 acknowledging receipt of his report of the June 21, 2008 alcohol
14 motor vehicle suspension until four days a ago.

15 He thus was unaware of the statement in Agent Grisham's
16 letter to the effect, quote, when completing your next application
17 for airman medical certificate, FAA Form 8500-8, please review
18 question 18(v) regarding convictions and/or administrative action
19 and follow the instructions and answer the questions. This would
20 include convictions, suspension, loss of driving privileges, any
21 required attendance at a substance abuse program or attendance of
22 alcohol education classes.

23 The Respondent said he read the instructions for item
24 18(v) on the application form, but not the instructions for item
25 18 health history and did not read the instructions accompanying

1 the application, a copy of which was admitted as Exhibit A-7. He
2 said the instructions on the application for item 18(v) can be
3 understood if read carefully. He said that when he put previously
4 reported on the November 3, 2008 application, he wanted the FAA to
5 know he had previously reported the suspension and was referring
6 to the report of August 5, 2008 to the FAA security division. He
7 said he signed the certification at the bottom of the form because
8 he believed everything was true and correct. He said that when he
9 was contacted by Agent Grisham concerning the investigation that
10 had been undertaken, he cooperated fully and that this shows his
11 good compliance attitude and his present state of mind.

12 The elements of the charge of intentional falsification
13 are a false statement made with knowledge of its falsity with
14 reference to a material fact. Part B, McLucas, M-C, capital
15 L-U-C-A-S, 535 F.2d 516, 519, (9th Circuit 1976). Proof of fraud
16 requires proof of two additional elements, an intent to deceive
17 and action taken in reliance upon the representation. Twomey,
18 T-W-O-M-E-Y, v. NTSB, 821 F.2d 63, 66 (First Circuit 1987). In
19 order for a statement to be material, it need only be capable of
20 influencing the decision of the agency. Twomey v. NTSB supra, at
21 66; Administrator v. Cassis, C-A-S-S-I-S, NTSB Order EA-1831(1982);
22 Administrator v. F. Anderson, A-N-D-E-R-S-O-N, NTSB Order EA-
23 4564(1997); and Administrator v. Richards, NTSB Order EA-
24 4813(2000). In Administrator v. Singleton, NTSB Order EA-
25 5437(2009) -- Singleton the Board said with regard to a false

1 statement on a medical application, we have long adhered to a
2 three-pronged standard to prove a falsification claim in
3 intentional falsification cases.

4 The Administrator must prove that a pilot, one, made a
5 false representation; two, made reference to a material fact;
6 three, with knowledge of falsity of the fact. We have also held
7 that a false statement is a material fact under the standard, if
8 the alleged false fact could influence the Administrator's
9 decision concerning the certificate. We have further stated that
10 an applicant's answer to all questions on the application are
11 material.

12 The Board went on to say, that we have stated that a
13 Respondent's failure to consider a question on a medical
14 application carefully before providing an answer did not establish
15 the lack of intent to provide false information.

16 The Board also said the intent or *mens rea*, discussion
17 in Hart concluded that the regulatory provision must be construed
18 to require actual knowledge of falsity of the answer, not that the
19 Respondent had to have the intent to submit a false answer.

20 Furthermore, in McGonegal, supra, we held that the
21 Administrator need not establish intent to falsify, but only that
22 the Respondent made false answers while cognizant of their falsity.

23 Finally, in the Singleton case, the Board also said that
24 we have held that revocation is appropriate in cases involving
25 intentional falsification on an application. Let me correct that

1 last quote.

2 It should read: We have held revocation is appropriate
3 in cases involving falsification. Item 18(v), is stated in plain
4 English, no illiterate person can reasonably misunderstand it.
5 The Respondent does not claim to be illiterate, nor does he claim
6 to have misunderstood. To item 18(v) on his application for a
7 medical certificate dated November 3, 2008, he answered yes, then
8 previously reported in the explanations box.

9 Question 18(v) clearly and unambiguously asked if he had
10 a history of any convictions involving driving while intoxicated
11 by or while impaired by or while under the influence of alcohol or
12 a history of any convictions or administrative actions involving
13 an offense which resulted in the denial, suspension, cancellation
14 or revocation of driving privileges or which resulted in the
15 attendance at an educational or rehabilitation program.

16 His yes answer to the application he submitted on or
17 about November 3rd was correct insofar as it went. The question
18 at issue is whether or not his further answer to item 18(v) in the
19 explanations block previously reported was also true.

20 At the time the Respondent completed and signed his
21 application for an airman medical certificate on November 3, 2008,
22 he had more than one alcohol-related motor vehicle incident, the
23 most recent one being on June 21, 2008, which had resulted in a
24 30-day civil revocation of his driver's license or suspension.
25 Because the second alcohol-related motor vehicle action occurred

1 two years after his 2006 application for a medical certificate
2 submitted to the same AME, it is not possible that the Respondent
3 had reported the June 2008 action on a previous medical
4 certificate of application.

5 Therefore, of course, since the June 2008 alcohol-
6 related motor vehicle action was not disclosed on the November 3,
7 2008 application for a medical certificate, the AME did not know
8 that the Respondent had two alcohol-related motor vehicle actions
9 which would possibly have precluded him from issuing the
10 certificate and required that he send the application to the
11 Federal Air Surgeon in Oklahoma City for review. The instructions
12 for item 18: Arrest, conviction, administrative history and the
13 explanation box for them relating to 18(v) plainly state,
14 underlined, see instruction page.

15 The instructions are found in Exhibit A-7, which is a
16 copy of the instructions attached to the application form that the
17 Respondent filled out on November 3, 2008, which the Respondent
18 professes he did not read. It says if yes is checked, a
19 description of the arrest/arrests and/or conviction/convictions
20 and/or administrative action/actions must be given in the
21 explanations box and further certain details must be given.

22 It is no defense that the Respondent did not read the
23 instructions carefully or that he did not read them at all. See
24 Singleton supra. The instructions clearly and unequivocally
25 required reporting the details on the application of an alcohol-

1 related motor vehicle action including an administrative action
2 such as was the case in the Respondent's case. It had to be
3 reported in the explanations block of the applications form, which
4 the Respondent signed on November 3, 2008. He did not do that.

5 Instead, he put down previously reported, which even he
6 admits he did not intend to be a reference to it being previously
7 reported on another medical certificate application. Instead he
8 intended it, he said, to be a reference to the motor vehicle
9 action notice being previously reported to FAA security.

10 The fact is that at no time did the Respondent report
11 the June 2008 alcohol-related motor vehicle action on any medical
12 application in the explanation box, which is exactly what the
13 instructions require. Parenthetically, I note that, but do not
14 find it necessary to decide for purposes of this case, that the
15 instructions for completing item 18(v) do not expressly authorize
16 use of the phrase previously reported in the explanation box
17 relating to Section 18(v). That phrase is found only in the
18 instructions for item 18, medical history.

19 Consequently, I so find the Respondent's answer
20 previously reported in the explanation box of item 18(v) is false,
21 and the Respondent knew it was false when he put it down on the
22 form.

23 Under the case law I have cited above, it was a false
24 statement made with knowledge of its falsity with reference to a
25 material fact. See Hart v. McLucas supra and Administrator v.

1 Singleton supra.

2 What Agent Grisham or Dr. Nicholson may have told the
3 Respondent afterwards is simply not relevant to the previous
4 untruthful statement Respondent made on his November 3, 2008
5 application for a medical certificate. The offense charged in the
6 complaint, a violation of FAR Section 67.403(a)(1), was complete
7 when the Respondent signed the certification on the application
8 form that his answers were complete and true, when in fact they
9 were not.

10 I find that Respondent's previously reported answer was
11 not only false, it was without any reasonable doubt material,
12 intentional and knowingly false, and capable of influencing the
13 Administrator's decision concerning whether to issue the medical
14 certificate for which the Respondent had applied, because the AME
15 did not know that the Respondent had two, not just one earlier,
16 alcohol-related motor vehicle actions, the first of which had been
17 reported to him in 2006, when he issued the medical certificate
18 for which the Respondent applied on November 3, 2008.

19 While the Respondent asserts as a defense that he did not
20 intend to make a false statement and was confused by the language
21 of the instructions and believed it was enough that he had
22 previously reported the June 2008 alcohol-related motor vehicle
23 action to the FAA security, that is no defense in this case. I do
24 not find Respondent to be a credible witness on this point. He
25 knew in 2006 that he had to report alcohol-related motor vehicle

1 actions in the explanations block on his application for a medical
2 certificate that he made in 2006; that he had somehow forgotten
3 that requirement two years later in 2008 is simply not credible.

4 Unlike in the case of Administrator v. Roarty,
5 NTSB order number EA-5263(2006), this is not a case in which the
6 Respondent inadvertently checked the wrong box. Here I find that
7 the Respondent knew exactly what he was doing and intended what he
8 said. Namely, previously reported when he knew that the second
9 alcohol-related motor vehicle action had not been previously
10 reported on a medical certificate application.

11 I find it unnecessary to reach the question of whether
12 his knowing and intentionally false and material statement was
13 fraudulent. The sanction is the same whether it was an
14 intentionally false or a fraudulent statement. Board precedent
15 firmly supports revocation as the appropriate sanction for
16 intentional falsification on an application for a medical
17 certificate. Administrator v. Singleton supra, Administrator v.
18 Martinez, NTSB Order No. EA-5409(2008); Administrator v.
19 Butchkosky, NTSB Order No. EA-4459(1996), in Administrator v.
20 Bopobimitz, NTSB Order No. EA-4179(1994), the Board made it clear
21 that revocation for intentional falsification of an application
22 for a medical certificate is appropriate for all airman
23 certificates held by the Respondent, not just his medical
24 certificate.

25 Upon consideration of all the substantial, reliable and

1 probative evidence of the record, I find the Administrator has, by
2 a preponderance of the evidence, proven that the Respondent
3 violated FAR Section 67.403(a)(1).

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ORDER

7 ACCORDINGLY, IT IS ORDERED: One, the Administrator's
8 order is affirmed; two, the Respondent's appeal is denied. I
9 would like to take this time to inform the counsel for the parties
10 that this decision can be appealed. I have reduced the appellate
11 rights of the parties and the emergency proceeding to writing, and
12 if counsel will come up, I will give each of you a copy. And I
13 will ask the reporter to mark a copy as ALJ Exhibit No. 1.

14

(Whereupon, the document referred to
15 as ALJ Exhibit 1 was
16 marked for identification and
17 received into evidence.)

18

19

20 ADMINISTRATIVE LAW JUDGE POPE: And gentlemen, if you
21 want me to, I will read the appellate rights into the record.

22

MR. HUDSON: I think receiving it is quite sufficient.

23

24 ADMINISTRATIVE LAW JUDGE POPE: I also want to attach
25 to the record as ALJ Exhibit No. 2, a brief that was handed to me
dated April 2, 2009 by Mr. Hudson a little while ago. And,

1 therefore, I'm going to mark it as ALJ Exhibit No. 2.

2 (Whereupon, the document referred to
3 as ALJ Exhibit 2 was
4 marked for identification and
5 received into evidence.)

6 ADMINISTRATIVE LAW JUDGE POPE: He also gave me his copy
7 of the Roarty case, but I don't think it's necessary to put that
8 into the record. All right, gentlemen, is there anything further
9 that should come before me in connection with this case by the
10 Administrator?

11 MR. WEBSTER: Nothing further for us, Your Honor.

12 ADMINISTRATIVE LAW JUDGE POPE: By the Respondent?

13 MR. HUDSON: Nothing further, Your Honor.

14 ADMINISTRATIVE LAW JUDGE POPE: I do want to stress,
15 Mr. Hudson, I don't know if you've been involved in one of these
16 cases before, that the time constraints that are spelled out in
17 the written summary of the appellate procedures are extremely
18 important, and if they're not complied with, the Board may very
19 well and probably will not accept the appeal.

20 MR. HUDSON: Understood.

21 ADMINISTRATIVE LAW JUDGE POPE: So when it says two
22 days, that's what it means. And the date for the filing of the
23 brief is also extremely important. I think if you just call the
24 office number, my hearing assistant or one of the staff people
25 there will tell you exactly what you have to do to preserve your

1 right to appeal. But you need to do it within that two-day period.
2 You could probably just fax it, something as simple as my client
3 appeals.

4 MR. HUDSON: Judge --

5 ADMINISTRATIVE LAW JUDGE POPE: You need to check it.

6 MR. HUDSON: The counting period would be from -- using
7 all calendar days, not business days, correct?

8 ADMINISTRATIVE LAW JUDGE POPE: Correct.

9 MR. HUDSON: Okay. Thank you.

10 ADMINISTRATIVE LAW JUDGE POPE: Well, let me think
11 about that for a minute. Today is Thursday, isn't it?

12 MR. HUDSON: Correct.

13 ADMINISTRATIVE LAW JUDGE POPE: It may be that Saturday
14 and Sunday do not count. Please call my office.

15 MR. HUDSON: To check with COP tomorrow if we feel it may
16 be an issue.

17 ADMINISTRATIVE LAW JUDGE POPE: Don't let the time
18 expire. And I think maybe those two days, Saturday and Sunday,
19 would not count. There's no way to get the appeal to them. But
20 it could be postmarked, of course. But in any event, just be
21 absolutely certain, because today is Thursday, and the second day
22 would be Saturday. Please call my office --

23 MR. HUDSON: Submit --

24 ADMINISTRATIVE LAW JUDGE POPE: -- and make sure that
25 if you want to file an appeal, that it's done timely. All right.

1 Anything else?

2 MR. WEBSTER: No, sir.

3 ADMINISTRATIVE LAW JUDGE POPE: All right. Then the
4 proceeding is adjourned.

5 (Whereupon, at 4:33 p.m., the hearing in the above-
6 entitled matter was adjourned.)

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9 EDITED AND DATED ON

10 APRIL 7, 2009

WILLIAM A. POPE, II.

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Administrative Law Judge

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