SERVED: August 18, 2010

NTSB Order No. EA-5538

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 18th day of August, 2010

J. RANDOLPH BABBITT, Administrator, Federal Aviation Administration, Complainant, v. KENNETH DON COOPER, Respondent.	Docket SE-18888

OPINION AND ORDER

The Administrator appeals the oral initial decision of Administrative Law Judge William R. Mullins, issued July 20, 2010.[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(c)(1),[2] but did not violate 14 C.F.R. §§ 61.15(e)[3] or 67.403(a)(1),[4] as the Administrator had alleged. The law judge ordered revocation of respondent's airline transport pilot (ATP), certified flight instructor (CFI), and second-class medical certificates, based on the violation of § 67.403(c)(1). We grant the Administrator's appeal concerning the § 67.403(a)(1) charge.

The Administrator issued the emergency revocation order,[5] which became the complaint in this case, on June 18, 2010. The complaint alleged that respondent submitted an application for a second-class airman medical certificate to an aviation medical examiner (AME) on April 13, 2010, and that respondent certified that all the information he provided on the application was

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[2] Section 67.403(c)(1) provides that the making of an incorrect statement in support of an application for a medical certificate may serve as a basis for suspending or revoking a medical certificate.

[3] The pertinent portion of § 61.15(e) provides that, "[e]ach person holding a certificate issued under this part shall provide a written report of each motor vehicle action to the FAA, Civil Aviation Security Division … not later than 60 days after the motor vehicle action."

[4] 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.

[5] This case proceeds pursuant to the Administrator's authority to issue immediately effective orders under 49 U.S.C. §§ 44709(e) and 46105(c), and in accordance with the Board's Rules of Practice governing emergency proceedings, codified at 49 C.F.R. §§ 821.52—821.57.

complete and true, and checked “No” in response to a question on the application concerning convictions and/or administrative actions. 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 the question at issue on the application, which inquires as follows:

> HAVE YOU EVER IN YOUR LIFE … HAD … ANY OF THE FOLLOWING? … Conviction, and/or Administrative Action History … History of (1) any arrest(s) and/or 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 arrest(s), and/or conviction(s), and/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.

Exh. A-1 at 2. The Administrator’s order alleged that, on or about February 22, 2008, respondent was arrested incident to an “alcohol related motor vehicle action” (Compl. at ¶ 2), and that, on or about May 10, 2008, the Department of Public Safety within the state of Texas suspended respondent’s driver’s license (Compl. at ¶ 3). The complaint stated that respondent’s answer of “No” to question 18v was not correct, and was fraudulent or intentionally false. The complaint also alleged that respondent violated § 61.15(e) because he did not report the motor vehicle action to the FAA within 60 days.

The law judge held a hearing for the case, at which the Administrator's counsel called FAA Special Agent Shawn Grisham to testify. Mr. Grisham stated that the FAA had not received a report of respondent's driver's license suspension under § 61.15(e), and speculated that respondent knew of the suspension when he completed the application. Mr. Grisham stated that he believed question 18v is clearly worded to require reports of arrests like respondent's, and that respondent could have read the instructions and asked for clarification, if needed.

The Administrator also called Jack Jordan, the doctor who examined respondent and issued the medical certificate, to testify. Dr. Jordan did not recall that respondent discussed his arrest or driver's license suspension with him during respondent's physical examination, and did not believe respondent asked him about question 18v. On cross-examination, Dr. Jordan identified a letter that he provided to respondent after respondent later told him about his arrest. Tr. at 35; Exh. R-3. The letter provides that Dr. Jordan "found [respondent] to be fully qualified to perform the duties and privileges of [his] pilots license with no alcohol problems or mental incapacities," and that he believed respondent's "license should be restored." Exh. R-3.

The Administrator concluded the case-in-chief with the testimony of Guillermo Salazar, who is the regional flight surgeon for the FAA Southwest Region in Fort Worth, Texas. Dr. Salazar stated that his duties include designating AMEs and overseeing programs to ensure that all AMEs follow FAA guidelines. Dr. Salazar identified a copy of the AME procedures that were in effect at the time that respondent completed his medical certificate application and underwent examination; the procedures specify that an AME must defer an application, rather than issue a certificate, if an airman reports a refusal of a blood-alcohol test at a traffic stop. Exh. A-6. Dr. Salazar stated that AMEs rely on the truthfulness of the answers that an airman provides on his or her application, and that a deferral should have occurred in this case, given the circumstances. Tr. at 44.

In response to the Administrator's case, respondent and his son testified.[6] Respondent testified that he has completed the medical certificate application process with Dr. Jordan since approximately 1996, and that respondent's standard procedure is to review his previous application and copy the answers from the previous application onto the new one, so that all answers

[6] Respondent's son stated that he helped respondent compose a letter to send to the FAA to report his driver's license suspension pursuant to § 61.15(e). This opinion does not include an analysis of the § 61.15(e) violation, as it is not an issue of which the Administrator seeks review on appeal.

match. Tr. at 57. Respondent stated that he did not know that question 18v had changed between the time he completed his 2008 application and the time that he completed the 2010 application at issue.[7] Respondent testified that he failed to answer question 18v correctly, but stated that he did not intentionally falsify the application. Tr. at 58. Respondent admitted that it was a "big mistake" to fail to read the question, and that, if he had read it, he would have answered "Yes." Id. Respondent further testified that he did not read the instructions that accompanied the medical certificate application. Respondent also stated that he was aware of his driver's license suspension at the time that he completed the application.

At the conclusion of the hearing, the law judge issued an oral initial decision, in which he determined that respondent had erroneously answered question 18v, but did not intentionally falsify the application at issue. The law judge stated that Dr. Jordan had characterized respondent's incorrect answer as "inadvertent," and that the Administrator did not show "any evidence of the scienter required of an intent to falsify this document." Initial Decision at 76. The law judge concluded, however, that respondent violated § 67.403(c)(1), because his

[7] The record indicates that the FAA added the word "arrests" to question 18v in early 2010.

answer to question 18v was incorrect, and therefore found that revocation of respondent's medical certificate was the appropriate sanction.

On appeal, the Administrator contends that the law judge erred in crediting respondent's defense that he did not falsify the application because he simply did not read it. The Administrator further argues that the law judge misapplied our precedent concerning falsification, and that the D.C. Circuit recently recognized that prior Board cases have held that an airman must read a question carefully before answering it. Appeal Br. at 10 (citing Dillmon v. NTSB, 588 F.3d 1085, 1094 (D.C. Cir. 2009)). Finally, the Administrator contends that the evidence the Administrator presented proves all three elements of falsification. Respondent disputes each of the Administrator's arguments, and urges us to affirm the law judge's decision.[8]

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

[8] We note that respondent's reply brief contends that he was confused about the FAA's recent change to question 18v, and was nervous during the examination; however, respondent's testimony at the hearing did not include any statements about this alleged confusion or anxiety. See tr. at 60 (respondent's testimony on cross examination: "Q. So if I understand, you are not saying that you were confused by the question; you just didn't read the question? A. That is correct.").

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.[9] We have also held that a statement is false concerning a material fact under this standard if the alleged false fact could influence the Administrator's decision concerning the certificate.[10]

In Administrator v. Dillmon, NTSB Order No. EA-5528 (2010), after the D.C. Circuit remanded the case to us, we clarified the manner in which we apply the aforementioned three-prong standard to cases in which the Administrator has charged intentional falsification. We stated that we will consider our law judges' credibility findings, as well as other relevant evidence, concerning a respondent's subjective understanding of a question on the medical application; if a respondent contends that he or she is confused about the meaning of a question, we will look to our law judges to make a credibility determination concerning the alleged confusion and the respondent's state of mind at the time that he or she completed the application. Dillmon, supra, at 12—14.

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

[10] 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).

Dillmon is not directly on-point for our consideration of the case at issue here. In this case, respondent admits that he did not read question 18v. He testified that, had he read the question, he would have checked "Yes." Tr. at 58. Our holding in Dillmon is relevant to cases in which a respondent was confused about a question on the application, and does not offer guidance on analyzing a case in which a respondent simply did not read the question. We find that the law judge's decision in this regard is misleading and lacks meaningful analysis of the key underpinnings of his decision.[11] The law judge stated that no evidence had been presented to indicate that respondent intended to falsify his answer to question 18v, and therefore granted respondent's appeal concerning § 67.403(a)(1). The law judge, however, offered no basis for this determination, other than his belief that respondent did not read the question.

The law judge's decision in the instant case is directly contrary to Administrator v. Boardman, NTSB Order No. EA-4515

[11] We also note, as an ancillary matter, that the law judge mischaracterized our holding in Dillmon. Prior to the D.C. Circuit's remand of Dillmon, we stated that the Administrator could prove the third element of the Hart v. McLucas test by providing evidence that a respondent provided an incorrect answer to a question on the medical certificate application while cognizant that the underlying fact was inconsistent with the answer. We have clarified, in our second Dillmon decision, that knowledge of the falsity of the answer is an element of the Hart v. McLucas standard. We did not hold, as the law judge stated, that intent was no longer an element of the Hart v. McLucas standard.

(1996). In the D.C. Circuit's opinion concerning Dillmon, the court summarized Boardman as follows: "Boardman stands for the proposition that the airman must read the question carefully before answering it." 588 F.3d at 1094. Indeed, in Boardman, we stated:

> It seems to us that an airman who, knowing [that the Administrator relies on the accuracy of answers on a medical certificate application], tenders an application that turns out to have a wrong answer to one or more of many questions he freely chose not even to read, much less to thoughtfully answer, cannot reasonably argue that he lacked the intent to give false information, for the submission of inaccurate information is a natural and foreseeable consequence of completing an application in a manner that essentially guarantees its unreliability.

NTSB Order No. EA-4515 at 3—4 (footnote omitted). We further stated that we believed that an airman who does not read the questions on a medical certificate application, as the respondent in Boardman, "should be determined to have intended that whatever answer he gave be utilized in the review of his qualifications." Id. at 4 (footnote omitted). As a result of this reasoning, we overturned the law judge's decision in Boardman, in which the law judge had found that the respondent lacked the specific intent to falsify. Much like the case at issue here, in Boardman, the respondent testified that he simply copied the answers from a previous application. Id. at 3 n.4. We determined in Boardman, and we reiterate here, that a failure to read a question before answering it renders the entire

medical certificate application process pointless, and does not provide a defense to a charge of § 67.403(a)(1). Moreover, we have previously held that revocation of all certificates is the appropriate sanction for a violation of § 67.403(a)(1).[12]

ACCORDINGLY, IT IS ORDERED THAT:

1. The Administrator's appeal is granted with regard to the 14 C.F.R. § 67.403(a)(1) charge;

2. The law judge's decision is reversed with regard to the 14 C.F.R. § 67.403(a)(1) charge; and

3. The Administrator's emergency revocation of respondent's ATP, CFI, and second-class medical certificates, and any other certificates respondent holds, is affirmed.

HERSMAN, Chairman, HART, Vice Chairman, and SUMWALT, ROSEKIND, and WEENER, Members of the Board, concurred in the above opinion and order.

[12] See, e.g., Administrator v. Culliton, NTSB Order No. EA-5178 at 6–7 (2005); Administrator v. McCarthney, 7 NTSB 670, 672 (1990).

UNITED STATES OF AMERICA

NATIONAL TRANSPORTATION SAFETY BOARD

OFFICE OF ADMINISTRATIVE LAW JUDGES

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In the matter of:                  *
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J. RANDOLPH BABBITT                *
ADMINISTRATOR,                     *
Federal Aviation Administration,   *
                                   *
                  Complainant,     *
     v.                            *    Docket No.:  SE-18888
                                   *    JUDGE MULLINS
KENNETH D. COOPER,                 *
                                   *
                  Respondent.      *
* * * * * * * * * * * * * * * * * *
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U.S. Courthouse and Federal Building
Conference Room B-46
1205 Texas Avenue
Lubbock, Texas 79401

Tuesday,
July 20, 2010

The above-entitled matter came on for hearing, pursuant to Notice, at 8:55 a.m.

BEFORE: WILLIAM R. MULLINS
Administrative Law Judge

APPEARANCES:

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ORAL INITIAL DECISION AND ORDER

ADMINISTRATIVE LAW JUDGE MULLINS: This has been a proceeding before the National Transportation Safety Board held here in Lubbock, Texas. And the matter came on for hearing on an Emergency Order of Revocation that has revoked Respondent's airman medical certificate based on the regulatory violations of FAR 61.15(e), 67.403(a) and 67.403(a)(1). The Order of Revocation serves as the complaint in these proceedings and was filed on behalf of the Administrator of the Federal Aviation Administration by the Regional Counsel of the Mike Monroney Aeronautical Center of Oklahoma City.

The matter has been heard before me, William R. Mullins. I am an Administrative Law Judge for the National Transportation Safety Board. As is provided in emergency cases, a bench decision will be issued at this time.

The matter came on for hearing pursuant to notice that was given to the parties for trial here in Lubbock on this 20th day of July of 2010. The Administrator was present throughout these proceedings and represented by counsel, Mr. James M. Webster, Esquire, of the Regional Counsel's Office of the Mike Monroney Center, the Aeronautical Center in Oklahoma City. Respondent was present at all times and represented by his counsel, Mr. H. Grady Terrill, Esquire, here in Lubbock.

The parties were afforded a full opportunity to offer evidence, to call, examine and cross-examine witnesses. In

addition, the parties were afforded an opportunity to make arguments in support of their representative positions.

DISCUSSION

ADMINISTRATIVE LAW JUDGE MULLINS: The Emergency Order of Revocation in this case states, and I will just read the paragraphs, paragraph 1 -- and this is directed to Mr. Kenneth Don Cooper:

Paragraph 1. You currently are the holder of airline transport pilot and flight instructor certificate number (omitted). And that was admitted.

Paragraph 2. On or about February 22nd, 2008, you were arrested incident to an alcohol related motor vehicle action. That was admitted.

Paragraph 3. On or about May 10th, 2008 your driver's license was suspended by the Department of Public Safety, State of Texas, incident to an "ALR suspension - refusal" offense. That was admitted.

Paragraph 4. The suspension referenced in paragraph 3 is an alcohol-related motor vehicle action which you are required to report to the Federal Aviation Administration -- FAA, Civil Aviation Security Division not later than 60 days after the motor vehicle actions.

That was admitted.

Paragraph 5. Incident to paragraphs 3 and 4 you did not report the motor vehicle action within the 60-day reporting

period. And that was denied by the Respondent.

Paragraph 6. On or about April 13th, 2010 you applied for and were issued a second class medical certificate. That was admitted by the Respondent.

Paragraph 7. On the above-mentioned application in response to item 18v medical history, have you ever in your life had any of the following: conviction and/or administrative action history, history of (1) any arrests and/or convictions involving driving while intoxicated by, while impaired by, or while under the influence of alcohol or drug, or (2) history of any arrests and/or convictions and/or administrative actions involving an offense which resulted in the denial, suspension, cancellation or revocation of driving privileges or which resulted in attendance at an educational or rehabilitation program. And you answered no, and that was admitted by the Respondent.

Paragraph 8. Incident to paragraphs 2 and 3, your answer to item 18v on the application was not correct. That was admitted.

Paragraph 9. Incident to paragraphs 6, 7 and 8, the FAA relied upon the information you provided in response to item 18v on the application. And that was denied by Respondent.

Incident to paragraphs 2, 3, and 6 through 13, your answers to item 18v on the application was fraudulent or intentionally false. That was denied by Respondent.

Paragraph 11. Incident to paragraphs 6 through 10, the

information you provided in response to 18v was material in that an airman medical certificate was issued without consideration of your actions as described in paragraphs 2 and 3. And that was denied by Respondent.

Paragraph 12. On item 20 of the application referenced above, you certified that all answers were complete and true knowing that an entry was false. That was denied by the Respondent.

And then it goes on further, by reason of the foregoing facts and circumstances you (A), incident to paragraphs 3, 4 and 5, violated Section 61.15(e) of the Federal Aviation Regulations in that you failed to report alcohol related motor vehicle actions to the FAA's Civil Aviation Security Division within 60 days of the motor vehicle actions -- and that was denied by the Respondent -- and (B), incident to paragraphs 2, 3 and 6 through 12, violated Section 67.403(a)(1) of the Federal Aviation Regulations in that you made or caused to be made a fraudulent or intentionally false statement on an application for medical certificate. That was denied by Respondent.

And the Order of Revocation specifies Section 67.403(c)(1), which provides for suspension or revocation of medical certificate on which an incorrect answer was submitted.

The first witness called by the Administrator was Mr. Shawn Grisham, who is a special agent, an investigator for the Federal Aviation Administration. And he indicated that he had

been in this position 12 years and with the FAA for, I think, 19 years. He testified that his emphasis was on reporting requirements of 61.15(e) and also on the medical application, I think, specifically. He talked about his investigation of answers under 18v. He identified Exhibits A-1, which is the blue ribbon copy of this Respondent's medical certificate, which reflects that application for medical that was submitted earlier this year. He also identified and there was admitted A-2, which is the information page that accompanies the medical application. He identified and there was admitted Exhibit A-3, the Texas Department of Public Safety record as pertains to this Respondent and specifically, the order suspending his driver's license back in 2008. He identified and there was admitted Exhibit A-4, which was the letter of investigation that he had sent to Respondent about his failure to submit the report required under 61.15(e). And then he identified and there was admitted Exhibit A-5, which was the response to that letter of investigation submitted by the Respondent. In that letter, Respondent related that he had submitted the report as required.

The second witness called by the Administrator was Dr. Jordan, who was the AME who approved this medical application. Dr. Jordan identified Respondent's Exhibit 3, which was this letter that Dr. Jordan sent in which said that Respondent's answer to 18v was inadvertent.

Of course I questioned that immediately, because how

would he know whether it was deliberate or inadvertent. There was certainly nothing in his testimony that indicated that he sat down, you know, some time afterward and satisfied himself that it was inadvertent. It was just a comment that he made.

I think the third witness for the Administrator was Dr. Salazar, Regional Flight Surgeon for the Southwest Region. And he talked about his conversations with Dr. Jordan and the fact that he had also said that he had sent a letter to Dr. Jordan concerning his conduct concerning this particular application.

Also Dr. Jordan identified, and there was admitted, Exhibit A-6, which is the guide for AME's, airman medical examiners, which requires apparently effective January of this year, anytime there is a revelation on the application that there has been a refusal to take a Breathalyzer it requires a deferral of issuance of the medical certificate to the regional flight surgeon and/or Oklahoma City. I am not sure where -- I think it probably goes to Oklahoma City. And at that time there is a requirement that there be some sort of alcohol evaluation by an addictionologist or someone familiar and approved by the FAA to review and consider alcohol problems of individuals. With that, the Administrator rested.

Respondent's first witness was Mr. Kenneth Ray Cooper, the son of Respondent. He is a commercial pilot with a flight instructor's certificate. He testified about the time in 2008 when his father received this suspension of his driver's license.

The order of suspension reflects that it was issued on May 10th. And on May 12th, R-2, which was offered and admitted into evidence, which was the letter that both Mr. Coopers have testified that was sent in response to the requirement under FAR 61.15(e). They testified, both, that it was duly typed, posted with a stamp, and that Mr. Cooper, Sr., the Respondent, took it to the post office that day.

The last witness was Mr. Cooper, who testified that when he took the application he did not read the full paragraph 18v, but he believes since he had submitted the letter reflected in Respondent's Exhibit 2 that he -- there was certainly no requirement -- he felt like the Administrator knew about this offense since he had sent this letter.

That was the testimony that I received. Those were the exhibits that were admitted. And let me just comment a little briefly.

The burden of proof is on the Federal Aviation Administration to establish these violations by a preponderance of reliable and probative evidence. The testimony of Mr. Grisham sort of suggested -- I am not saying that he came out and said this, but if you listened, as I listened, to Mr. Grisham's testimony, he seemed to suggest that there was some requirement which is not reflected in the regulation that once the Respondent sends these reports in pursuant to 61.15(e) that there was some obligation on the Respondent to follow up on that.

There is no requirement in the regulation that it be sent certified mail. The testimony here was that it was posted by regular mail. The Administrator's testimony pursuant to Mr. Grisham is that they don't have it. We don't get that much paperwork in our office, but I know occasionally documents get filed in the wrong file. But in any event, the testimony here today was that it was mailed. And there has not been anything to discredit that testimony except the Administrator doesn't have it at this time.

The requirement under 18v to report this, the testimony was from Mr. Cooper that he had submitted the report to the Administrator. And I have long wondered why, and hopefully some day, and particularly in this era of information technology, that one document would suffice to go to all arms and divisions of the FAA that has been submitted that would satisfy these reporting requirements.

I do understand, and certainly it is going to be a result of these proceedings today, but I do understand that the Administrator has a serious interest in overseeing alcohol-related offenses and how that might impact aviation. We will get to that in a minute. But that is a serious thing.

But the Administrator was aware at this time, and I don't know that there is any way to disseminate that information down to the local AMEs except perhaps in this era of information technology that an AME can just type in on his computer "I have

this applicant, his certificate number is this, is he good to go from all the information you have." In this case, it wouldn't have been because the report wasn't there, but somewhere down the line that information, hopefully, will be available if it is there and it is available, it would available to the AMEs and everyone who is issuing these certificates.

There has been a lot of movement in these cases in the last year, the intentional falsification issues. The Board adopted a position some two years ago or maybe even longer ago, three years ago, in one of their decisions. And that decision was, and I quote, "Intent to falsify is no longer an element of intentional falsification." And the D.C. Circuit in a case by the name of Singleton sort of suggested to the Board that they needed to revisit that a little bit and referred back to the principal case over the years, which is, I think, a 1976 case called Hart v. McLucas.

The Hart v. McLucas talked about the requirement of scienter on intentional falsification issues; i.e., did the person making the entry know that it was false at the time they entered it and was it their intent to falsify at the time they made that entry? That creates a burden of proof, which is still by a preponderance of the evidence. But I think the cases over the years have suggested until just recently, and then the Singleton case put us back where we were before, I think, that the Administrator can't just say, okay, here is the entry and,

therefore, since it is false, it was intentional falsification.

The Court said in Hart v. McLucas, the D.C. Circuit said that -- and I will just quote it to you, it says, "If the FAA" -- the Court was concerned that the FAA was saying that there was strict liability; i.e., if the entry was made, therefore, it was intentionally false. And the D.C. Circuit said in Hart v. McLucas that if the FAA thinks it would be better to establish strict liability it is free to seek amendment of their own regulation. And over the years the Administrator has not seemed to do that.

So, therefore, I would make the following findings in this case. First of all, the testimony, which is unrebutted here from both the Respondent and his son was that there was a report submitted as required under 61.15(e).

The second finding I would make is that there has not been shown any evidence of the scienter required of an intent to falsify this document. There was just no evidence of intent to falsify.

And, three, I find that notwithstanding that, it was pretty clear under the evidence and admitted by Respondent that there has been accomplished that the entry was false, which would require a revocation of that medical certificate. And, of course, based on those findings, there is no finding that there was a regulatory violation of 61.15 or 67.403(a)(1), but there is a finding of 67.403(c)(1), which requires that revocation of the medical.

ORDER

IT IS THEREFORE ORDERED that safety in air commerce and safety in air transportation does not require an affirmation of the Administrator’s Order of Revocation as issued. And, specifically, based on the discussion that I have just shared with the parties, I find that there was not established by a preponderance of the reliable and probative evidence a regulatory violation of FAR 61.15(e) or a regulatory violation of FAR 67.403(a)(1), but I do find that there was established a regulatory violation of FAR 67.403(c)(1), which requires, and there will be ordered, a revocation of the airman's medical certificate. And it will be so ordered.

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EDITED ON
AUGUST 3, 2010

WILLIAM R. MULLINS
Administrative Law Judge