

SERVED: January 16, 2014

NTSB Order No. EA-5697

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 15th day of January, 2014

_____	)	
MICHAEL P. HUERTA,	)	
Administrator,	)	
Federal Aviation Administration,	)	
	)	
Complainant,	)	
	)	Docket SE-19510
v.	)	
	)	
KELVIN R. CHANGUR,	)	
	)	
Respondent.	)	
	)	
_____	)	

**OPINION AND ORDER**

**1. Background**

Respondent appeals the oral initial decision of Chief Administrative Law Judge Alfonso J. Montañó, issued July 10, 2013, following a hearing.<sup>1</sup> In his decision, the law judge affirmed the Administrator’s emergency order revoking respondent’s airline transport pilot (ATP)

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

certificate and any other certificates respondent holds, determining respondent violated 14 C.F.R. § 67.403(a)(1),<sup>2</sup> by intentionally falsifying a medical certificate.<sup>3</sup> We deny respondent's appeal.

A. *The Administrator's Order*

The Administrator's order, issued June 6, 2013, alleged respondent intentionally falsified a medical certificate application he completed on or about August 16, 2012. The order stated respondent answered "no" to the inquiry of whether he had a "[h]istory of nontraffic conviction(s) (misdemeanors or felonies)."<sup>4</sup>

However, on or about June 29, 2012, respondent pleaded guilty and received a sentence in Federal court for falsification of a previous Federal Aviation Administration (FAA) medical certificate (in violation of 18 U.S.C. § 1001) and for falsification of a passport record (in violation of 18 U.S.C. § 1542).<sup>5</sup> Respondent signed the August 16, 2012 medical certificate application, certifying his responses on it were true. Based on the foregoing, the Administrator charged respondent with intentionally falsifying the application, and alleged respondent lacked the qualifications to hold an ATP and any other certificate.

B. *Facts*

Respondent appealed the Administrator's emergency order, and the case proceeded to a hearing. The Administrator provided the testimony of FAA Special Agent Richard Buczek, who

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<sup>2</sup> 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.

<sup>3</sup> Respondent waived the applicability of the expedited procedures normally applicable to emergency cases. Respondent also requested oral argument under 49 C.F.R. § 821.48(e). We find the parties have fully briefed the issues, and holding an oral argument is therefore unnecessary.

<sup>4</sup> Order at ¶ 4; see also Exh. A-2 at 2.

<sup>5</sup> Order at ¶ 3.

laid the foundation for various exhibits, such as respondent's medical file, the letter of investigation Agent Buczek sent to respondent on March 18, 2013, and a copy of the judgment from the United States District Court for the Southern District of Florida, dated June 29, 2012. Agent Buczek testified he assisted staff from the Department of Transportation's Inspector General Office in their investigation of the charges that led to the judgment from the Southern District of Florida. Agent Buczek testified he did not know if staff at the local FAA Flight Standards District Office in Florida knew of respondent's convictions.<sup>6</sup>

In rebuttal, respondent called three witnesses who testified in his defense. Joseph Puglia, an FAA Designated Pilot Examiner who administered examinations upon respondent's request, testified respondent told him respondent's conviction was for listing an incorrect date of birth on his passport. Mr. Puglia stated respondent characterized this error as a "misprint" on his passport.<sup>7</sup> Respondent did not mention his conviction for falsification of his medical certificate to Mr. Puglia.

Kamal Patel, who owns and operates a flight school in Florida and works at Amerijet, agreed to help respondent with respondent's flight training, so he could obtain re-certification. Mr. Patel testified respondent told him about a conviction and an "issue with his medical" which related to respondent's passport.<sup>8</sup>

Sam Kedem, a clinical therapist who is a resident psychologist at a small hospital in Florida, testified respondent visited him for treatment due to stress, and told him he had been convicted of a felony for falsifying his medical. Mr. Kedem recalled respondent mentioned his

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<sup>6</sup> Tr. 33-34.

<sup>7</sup> Tr. 47.

<sup>8</sup> Tr. 53-55.

date of birth on his passport, and believed respondent told him he had falsified his date of birth on both his medical and his passport.<sup>9</sup>

Respondent also testified in his defense. He described how he obtained asylum in the United States from Guyana in 2001. Respondent recalled, in detail, the various positions of employment he occupied in the aviation industry, from customer service agent to flight attendant to first officer. Respondent attended Clearwater and Gulfstream Aviation Academy, both in Florida, and successfully completed his coursework to gain his multi-engine rating within one year, while simultaneously working as a flight attendant at U.S. Airways Express in New York. After obtaining his ATP, respondent worked as a first officer in Beech 1900 aircraft for CommutAir, which hired respondent on-the-spot at a job fair. Respondent then held the position of first officer with various other employers in different aircraft, such as the CRJ 200 and Boeing 727.

At the hearing, respondent summarized his convictions, specifically with respect to his falsification of medical certificate applications dated August 18, 2010 and September 26, 2011, on which he did not disclose an illness. When he applied for a position at Spirit Airlines, staff realized a discrepancy concerning respondent's date of birth existed on his paperwork. The Department of Justice investigated and charged respondent with making false statements to the U.S. Government and falsification of his passport. Respondent pleaded guilty, and the United States District Court for the Southern District of Florida issued the judgment on June 29, 2012. The Court found respondent guilty in violating 18 U.S.C. § 1001 by intentionally falsifying his previous medical certificate applications, dated September 26, 2011, in failing to disclose a past

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<sup>9</sup> Tr. 65.

illness and 18 U.S.C. § 1542 by making false statements in his application for a United States passport.<sup>10</sup>

Following the Administrator's revocation of his certificates and the judgment,<sup>11</sup> respondent's employer, Amerijet, deferred his employment until respondent obtained his certificates again. Once respondent was eligible to apply for his certificates, he did so. Respondent attended training and again obtained his type rating in the Boeing 727. On August 16, 2012, respondent submitted the medical certificate application at issue, on which he admitted he incorrectly answered "no" to the question of whether he had any nontraffic convictions. Respondent stated he was excited at the time he completed the application and should have been more careful.<sup>12</sup> Respondent stated he "briefly" read the instructions attached to the medical certificate application, but saw the word "nontraffic" on question 18(w) as though it said "traffic," and believed he only needed to report automobile-related traffic convictions.

After receiving the letter of investigation from Special Agent Buczek, respondent contacted an aviation medical examiner to correct his mistake. The record contains the correspondence respondent sent to the FAA Southern Regional Flight Surgeon in Georgia in April 2013, on which respondent acknowledged his "unintentional mistake" on his August 16, 2012 medical certificate application.<sup>13</sup> In addition, the record contains e-mail correspondence

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<sup>10</sup> Shortly after arriving in the United States by obtaining asylum, the record shows respondent became a legal permanent resident, married a United States citizen, and then became a naturalized citizen of the United States; hence, respondent was eligible for a United States passport.

<sup>11</sup> Respondent testified he and the Administrator stipulated to an abbreviated, 6-month revocation period, after which respondent would be eligible to apply for reinstatement of his certificates.

<sup>12</sup> Tr. 101 (respondent also stated, "I was careless").

<sup>13</sup> Exh. A-2.

respondent sent to staff at Amerijet in October 2012, in which respondent stated he made a “stupid mistake” by submitting an incorrect answer on his medical certificate application.<sup>14</sup>

*C. Law Judge’s Oral Initial Decision*

At the conclusion of the hearing, the law judge determined the Administrator proved respondent violated § 67.403(a)(1) when he intentionally falsified his answer to question 18(w) on his August 16, 2012 medical certificate application. The law judge provided a detailed summary of the evidence introduced at the hearing, and made a credibility finding adverse to respondent. The law judge determined respondent’s three witnesses, Messrs. Puglia, Patel, and Kemel, were all credible, but found their testimony unfavorable to respondent’s defense, because the testimony demonstrated respondent was not truthful with these witnesses. In this regard, the law judge stated respondent did not tell any of the witnesses that his convictions were based on intentionally falsifying a previous medical certificate by not disclosing a diagnosis of an illness he was required to report. Instead, when respondent explained his convictions to each of the three witnesses, they recalled respondent only mentioned the discrepancy regarding the date of birth on his passport.

The law judge determined respondent possessed an above-average level of intelligence. In addition, the law judge noted ATP certificate holders are held to a high standard and are expected to be capable of exercising care, especially when completing a medical certificate application. Finally, the law judge stated respondent’s prior convictions in a Federal court, for crimes relating to falsifying documents, adversely affect respondent’s credibility.

The law judge considered the three-prong intentional falsification test. To prove a respondent intentionally falsified a document, we have long held the Administrator must

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<sup>14</sup> Exh. R-2.

establish the respondent (1) made a false representation, (2) in reference to a material fact, and (3) had knowledge of its falsity.<sup>15</sup> The law judge determined the Administrator proved all three prongs in the case *sub judice*.

#### D. *Issues on Appeal*

On appeal, respondent contends the law judge erred by misinterpreting the testimony of his witnesses, thereby issuing an arbitrary and capricious credibility finding. Respondent also asserts the law judge applied a wrong standard of review in evaluating the testimony and reaching his decision.

## 2. *Decision*

On appeal, we review the law judge's decision *de novo*, as our precedent requires.<sup>16</sup> In cases in which a party challenges a law judge's credibility finding, we defer to the credibility findings of our law judges in the absence of a showing such findings are arbitrary and capricious.<sup>17</sup>

#### A. *Law Judge's Credibility Determinations*

##### 1. *Witnesses Puglia, Patel, and Kemel*

In the case at issue, we find the evidence presented at the hearing and the law judge's findings of fact support the law judge's determination that respondent's witnesses' testimonies were credible. Respondent called these witnesses to testify regarding his character. Specifically,

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<sup>15</sup> Hart v. McLucas, 535 F.2d 516, 519 (9th Cir. 1976).

<sup>16</sup> Administrator v. Smith, NTSB Order No. EA-5646 at 8 (2013); Administrator v. Frohmuth and Dworak, NTSB Order No. EA-3816 at 2 n.5 (1993); Administrator v. Wolf, NTSB Order No. EA-3450 (1991); Administrator v. Schneider, 1 N.T.S.B. 1550 (1972) (in making factual findings, the Board is not bound by the law judge's findings).

<sup>17</sup> Administrator v. Porco, NTSB Order No. EA-5591 at 13-20 (2011), aff'd, Porco v. Huerta, 472 Fed.Appx. 2 (D.C. Cir. 2012) (per curiam).

respondent sought their testimonies to prove he was truthful with them in discussing his conviction and had nothing to hide. However, the law judge correctly noted their testimonies belied respondent's main defense—that he did not intend to falsify the medical certificate application, but instead only made a mistake. All three of respondent's witnesses stated respondent specifically told them his conviction related to an incorrect date on his passport.<sup>18</sup> However, notwithstanding this level of detail they all recalled concerning the passport, only Mr. Kedem stated respondent told him he had been convicted of a felony for “falsifying his medical.”<sup>19</sup> Even that fact was only partially correct as Mr. Kedem then testified respondent had told him he falsified his date of birth on both his medical and his passport. During his testimony, respondent admitted he falsified his previous medical certificate application by failing to disclose the existence of an illness.

The witnesses' lack of knowledge concerning respondent's falsification of his medical certification indicates respondent was not forthcoming with each of these witnesses when he encountered them and discussed the history and current status of his medical certificate. In this regard, the law judge correctly assessed the witnesses' testimonies, and nothing in the record compels us to find his determinations were arbitrary and capricious.

## *2. Respondent's testimony*

Likewise, the law judge's credibility finding concerning respondent's testimony was not arbitrary and capricious. The law judge provided a detailed summary of the evidence from the hearing,<sup>20</sup> and sufficient rationale for his adverse credibility finding concerning respondent. In

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<sup>18</sup> Tr. 46-47 (Mr. Puglia's testimony); Tr. 53 (Mr. Patel's testimony); Tr. 65 (Mr. Kedem's testimony).

<sup>19</sup> Tr. 65.

<sup>20</sup> Initial Decision at 168-186.

reaching this credibility determination, the law judge found respondent was a person with above-average intelligence who had completed the medical certificate application several times. The law judge found it simply was not credible that respondent believed question 18(w) on the application only applied to traffic convictions. The law judge determined the fact that employees from the Department of Transportation's Inspector General Office and from the Department of Homeland Security knew of respondent's convictions did not obviate respondent's obligation to provide truthful answers on the FAA medical certificate application.

The evidence in the record supports the law judge's determination that respondent's testimony lacked credibility. At the hearing, respondent summarized his background in aviation. Respondent's successful completion of coursework while maintaining employment, to the extent he was able to obtain several certifications and type ratings in an abbreviated period of time, supports the law judge's determination that respondent's level of intelligence was adequate to ensure he understood the phrase "nontraffic convictions." In addition, at the hearing, respondent testified he "briefly" read the instructions attached to the medical certificate application, which provide examples of such nontraffic convictions.<sup>21</sup> This testimony, however, contradicted respondent's previous statement to the Administrator's attorney that he had not read the instructions.<sup>22</sup>

Finally, respondent's apparent lack of care in completing the medical application is not credible, given that he had only recently become eligible to complete it again. Respondent claims he did not have the intent to falsify, because he had already disclosed his convictions to several people. In this regard, we note proof of a motive is not an element of a § 67.403(a)(1)

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<sup>21</sup> Tr. 109.

<sup>22</sup> Tr. 110 (colloquy between parties' attorneys and the law judge concerning admission of Exhibit A-7, which are the instructions attached to the medical certificate application).

violation. Based on the evidence in the record, combined with the law judge's findings of fact tied to that evidence, we find the law judge's credibility determinations were not arbitrary and capricious.

*B. Intentional Falsification Analysis*

As noted above, under Hart v. McLucas,<sup>23</sup> the Administrator must prove the respondent (1) made a false representation, (2) in reference to a material fact, and (3) had knowledge of its falsity. The Court of Appeals for the District of Columbia Circuit (D.C. Circuit) affirmed this three-prong evidentiary standard in Dillmon v. NTSB,<sup>24</sup> wherein the Court emphasized the Board must engage in a careful review of all three prongs of the standard. Following remand from the D.C. Circuit, we issued an opinion and order in Dillmon in which we indicated law judges' credibility assessments as to a respondent's subjective intent were critical to the third prong of the analysis.<sup>25</sup>

We find the Administrator fulfilled the burden of proof in this case. The law judge determined, and respondent does not dispute, the Administrator fulfilled both the first and second prongs of the test. Concerning the third prong of the test, we have acknowledged a law judge's credibility determinations concerning a respondent's knowledge of the falsity of the record at issue turns on respondent's testimony. In Dillmon, we instructed NTSB law judges to issue credibility findings concerning the respondent's intent at the time he or she provided the alleged incorrect information. In this case, the law judge delivered such a finding. He determined respondent's testimony regarding his state of mind when he completed the application was not credible.

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<sup>23</sup> Hart v. McLucas, 535 F.2d 516, 520 (9<sup>th</sup> Cir. 1976).

<sup>24</sup> 588 F.3d 1085 (D.C. Cir. 2009); NTSB Order No. EA-5528 (2010).

<sup>25</sup> Administrator v. Dillmon, NTSB Order No. EA-5528 at 11-12 (2010).

Respondent contends the law judge applied an incorrect standard, in that he did not find respondent *intended to falsify*, but only found that he provided a false answer. This contention is without merit. The law judge's failure to include the adverb "intentionally" at one point during his oral initial decision does not amount to an insufficient analysis.<sup>26</sup> Furthermore, on the page following that cited by respondent, the law judge clearly finds respondent intentionally falsified the medical certificate application, expressly using the phrase "intentionally false" twice.<sup>27</sup> The law judge clearly considered the three prongs of the Hart v. McLucas test, and provided a lengthy, detailed rationale for his determination that respondent had the intent to falsify when he completed the application.<sup>28</sup>

**ACCORDINGLY, IT IS ORDERED THAT:**

1. Respondent's appeal is denied; and
2. The law judge's decision is affirmed.

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

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<sup>26</sup> Respondent quotes the following portion of the law judge's decision in support of his argument:

The issue is not whether [r]espondent reported the conviction to the FAA or that the FAA knew of the conviction. The issue before me is whether or not [r]espondent made a false statement on his medical application. Therefore, if this is an affirmative defense, I do not find that that affirmative defense has been proven by a preponderance of evidence.

Initial Decision at 192.

<sup>27</sup> Id. at 193.

<sup>28</sup> Id. at 177-188.

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

\* \* \* \* \*

In the matter of: \*

MICHAEL P. HUERTA, \*

ADMINISTRATOR, \*

Federal Aviation Administration, \*

Complainant, \*

v. \* Docket No.: SE-19510

KELVIN R. CHANGUR, \* JUDGE MONTAÑO

Respondent. \*

\* \* \* \* \*

Claude Pepper Federal Building  
51 Southwest 1st Avenue  
Courtroom 1524  
Miami, Florida

Wednesday,  
July 10, 2013

The above-entitled matter came on for hearing,  
pursuant to Notice, at 8:33 a.m.

BEFORE: ALFONSO J. MONTAÑO,  
Chief Administrative Law Judge

## APPEARANCES:

On behalf of the Administrator:

ROBERT B. DIXON, Esq.  
Federal Aviation Administration  
Office of the Regional Counsel  
1701 Columbia Avenue, ASO-7  
College Park, Georgia 30337  
(404) 305-5200

On behalf of the Respondent:

STUART A. GOLDSTEIN, P.A.  
9350 South Dixie Highway, 10th Floor  
Miami, Florida 33156-2951  
(305) 670-1222

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10 ORAL INITIAL DECISION AND ORDER

11 ADMINISTRATIVE LAW JUDGE MONTAÑO: This has been a  
12 proceeding under the provisions of 49 USC Section 44709, formally,  
13 Section 609 of the Federal Aviation Act, and the provisions of the  
14 Rules of Practice in Air Safety Proceedings of the National  
15 Transportation Safety Board. These proceedings have been held  
16 relative to the sections pertaining to emergency proceedings  
17 instituted by the Administrator, Federal Aviation Administration.

18 Kelvin Romello Changur, the Respondent, appealed the  
19 Administrator's Emergency Order of Revocation dated July 6, 2013.  
20 The emergency order was filed as the Administrator's complaint, in  
21 accordance with Section 821.31 and 821.55 of the Board's Rules of  
22 Practice, and that was filed on June 14, 2013.

23 The Administrator alleges that the Respondent violated  
24 Section 67.403(a)(1) of the Federal Aviation Regulations, which  
25 state that no person may make or cause to be made a fraudulent or

1 intentionally false statement on any application for medical  
2 certificate or on a request for any authorization for special  
3 issuance of a medical certificate or statement of demonstrated  
4 ability under this part. The Respondent filed an answer to the  
5 complaint.

6 This matter has been heard by me as an administrative  
7 law judge and as required by the regulations relative to emergency  
8 cases, I am issuing an Oral Initial Decision.

9 Pursuant to notice, this matter came on for trial on  
10 June 9th and 10th in Miami, Florida. The Administrator was  
11 represented by one of the staff counsel, Mr. Robert B. Dixon,  
12 Esquire, Federal Aviation Administration, and the Respondent was  
13 represented by Mr. Stuart Goldstein. The parties were afforded a  
14 full opportunity to offer evidence, to call, examine and cross-  
15 examine witnesses, and to make arguments in support of their  
16 respective positions. Mr. Changur has been in the courtroom  
17 throughout the hearing and has participated in these proceedings.

18 I will not discuss all of the evidence in detail. I  
19 have, however, considered all of the evidence, both oral and  
20 documentary. That which I do not specifically mention in this  
21 decision is viewed by me as being either corroborative or not  
22 materially affecting the outcome of this decision.

23 AGREEMENTS

24 I will talk now about the agreements that the parties  
25 have reached. In his answer to the Administrator's complaint, the

1 Respondent admitted allegations in paragraphs 1, 2, 3, 4, 5 and  
2 10. Respondent answered the allegation in paragraph 9 by stating  
3 correctly that that citation to the law speaks for itself.  
4 Respondent denied the allegations in paragraphs 6, 7 and 8 of the  
5 Administrator's complaint.

6           As far as the exhibits in this case are concerned, the  
7 Administrator moved for the admission of Exhibits A-1, A-5, A-4,  
8 which were admitted into evidence without objection from the  
9 Respondent. Respondent objected to Exhibit A-2, which was  
10 admitted into evidence over the Respondent's objection. The  
11 Administrator also moved for the admission of, I believe it was  
12 Exhibit A, I believe -- let me go off the record for a second.

13           (Off the record.)

14           (On the record.)

15           ADMINISTRATIVE LAW JUDGE MONTAÑO: And has also moved  
16 for the admission of Exhibit A-7, which were the instructions to  
17 airman medical application form, which was admitted over the  
18 objection of the Respondent.

19           The Respondent moved for the admission of Exhibits R-3,  
20 R-2 and R-1. R-1 was admitted over the objection of the  
21 Administrator.

22           As far as stipulations in this case, the parties  
23 stipulated that there were two government witnesses at the  
24 Respondent's sentencing for his felony conviction for false  
25 statements in the application and use of a passport, and false

1 statements under 18 USC 1001. They identified those agents as  
2 Timothy Arnold, a special agent for the Department of  
3 Transportation, and James Wolynetz, who was from the Department of  
4 Homeland Security.

5 DISCUSSION

6 Now, what I will do is talk about the testimony in this  
7 case. The Administrator presented the testimony of Special Agent  
8 Richard Buczek. Special Agent Buczek has worked for the FAA for  
9 28 years. He testified that he is familiar with the Respondent  
10 due to his investigation of this case. He testified he became  
11 involved in the case after it was discovered that question 18(w)  
12 had improperly been answered by the Respondent in his August 2012  
13 medical application.

14 Special Agent Buczek testified he collected documents  
15 relative to the Respondent's conviction in federal court, and also  
16 collected internal FAA documents. He sent a letter of  
17 investigation to the Respondent in March of 2013, informing the  
18 Respondent that the FAA had learned that he had failed to disclose  
19 his felony convictions in his medical application. The letter has  
20 been admitted into evidence as Exhibit A-5.

21 Special Agent Buczek sponsored Exhibit A-1, which is the  
22 certified copy of the Respondent's airman file. He testified that  
23 page 51 of A-1 is the Administrator's Order of Revocation revoking  
24 the Respondent's ATP certificate, airline transport pilot  
25 certificate, relative to making false statements in his August 18,

1 2010 and September 26, 2011 medical applications.

2 Respondent failed to disclose his illness diagnosed in  
3 1999 on those medical applications. Based on those false  
4 statements, his ATP was revoked. Agent Buczek sponsored Exhibit  
5 A-2, which was a certified copy of the Respondent's blue-ribbon  
6 airman medical file. He testified that pages 2 through 6 of that  
7 exhibit included the medical application in which Respondent  
8 answered "No" to question 18(w), which asks if there is a history  
9 of nontraffic convictions, and in parentheses, (misdemeanors or  
10 felonies).

11 Agent Buczek also sponsored Exhibit A-4, which is a  
12 certified copy of the Certificate of Judgment from the United  
13 States District Court of the Southern District of Florida. He  
14 testified the document indicates the date of the imposition of  
15 sentence as June 29, 2012.

16 On cross-examination, he testified he was not even sure  
17 as to the exact date when he became involved in the case. He  
18 testified it was after August 2012. He thought it was probably  
19 about the time he sent the letter of investigation to the  
20 Respondent.

21 Agent Buczek testified that he was peripherally involved  
22 in the prior revocation of the Respondent's ATP certificate. He  
23 testified he assisted the Department of Justice and the Department  
24 of Transportation by providing them with documents and record  
25 information that had been maintained by the FAA. When he was

1 asked if he knew if the two agents that were referred to earlier  
2 from the Department of Homeland Security and the Department of  
3 Transportation were involved in the investigation, he answered  
4 that he was aware of it and he testified he had communicated with  
5 them. He also testified that he was not aware of a settlement of  
6 the ATP revocation for a 6-month period. He testified he was  
7 aware of the conviction because Special Agent Arnold had told him  
8 about it.

9 Agent Buczek, on cross-examination, testified that he  
10 did not believe any other FAA employees were involved in the  
11 criminal investigation. He testified he did not know if any of the  
12 local Flight Standards District Office employees were aware of the  
13 Respondent's convictions. He testified he was not sure if the  
14 principal operations inspector was aware of the conviction. Agent  
15 Buczek testified he was not sure if Special Agent Arnold spoke to  
16 the Flight Standards District Office about the conviction in this  
17 case, but he indicated that that was possible. He also testified  
18 that he did not speak to Captain Cook or the head of security at  
19 Amerijet during his investigation. On cross-examination, he also  
20 testified he believed he became aware of the conviction at the  
21 date of the sentencing in this case, in June of 2012.

22 I found his testimony to be credible both on direct and  
23 cross-examination. That was the single witness for the  
24 Administrator.

25 The Respondent then presented the testimony of Joseph C.

1 Puglia, Kamal Patel, Samuel Kedem, and Mr. Changur testified on  
2 his own behalf, as well.

3 Mr. Joseph C. Puglia testified first. He testified that  
4 he is an FAA designated flight examiner. He testified that he is  
5 certified by the FAA to conduct examinations for the FAA for  
6 certificates ranging from private pilots up to and including  
7 airline transport pilot certificates. He also has been a FAA  
8 designated examiner since 1998. Mr. Puglia testified as to his  
9 extensive aviation experience.

10 As to the matters in issue in this case, Mr. Puglia  
11 testified on direct that the Respondent contacted him in May or  
12 June of 2012 to request that he, Mr. Puglia, conduct a number of  
13 examinations because the Respondent's pilot certificates had been  
14 revoked.

15 Mr. Puglia testified that the testing lasted a number of  
16 days. He believed that the testing went from Friday through  
17 Monday to complete the required testing. He testified that there  
18 had been a delay in the testing because the Respondent had to  
19 obtain a medical certificate first. He testified that not many  
20 pilots retest after revocation, but he testified that he had to  
21 ask the Respondent if the revocation was related to drugs as part  
22 of his testing protocol. The Respondent told him that his  
23 conviction was not related to drugs.

24 Mr. Puglia testified that the Respondent told him that  
25 the conviction was related to his passport, it related to the

1 dates on his passport regarding his date of birth, and he  
2 testified that the Respondent told him that the problem led to  
3 several other government actions. The Administrator did not  
4 cross-examine this witness.

5 I asked Mr. Puglia if the Respondent indicated that the  
6 convictions dealt with his medical certificate, to which  
7 Mr. Puglia testified no. He testified that the Respondent told  
8 him that the conviction was due to a mistake as to his date of  
9 birth on his passport. The Respondent told him the passport  
10 agency had made the mistake.

11 I found the testimony of Mr. Puglia to be credible, as  
12 well.

13 Kamal Patel then testified for the Respondent. He  
14 testified that he owns his own flight school and also worked as a  
15 pilot with Amerijet. He testified that he has owned his own  
16 flight school since 2009. He testified as to his aviation  
17 experience as a pilot, and is a certified flight instructor for  
18 private pilot certificates, commercial pilot certificates, and  
19 multi-engine pilot certificates, and the instrument rating as  
20 well.

21 He testified he met the Respondent when they both worked  
22 for Amerijet. He testified that they had kept in touch after he  
23 left Amerijet. Mr. Patel testified that he was contacted by the  
24 Respondent. The Respondent had told him that he needed to do some  
25 flight training to retest to get his commercial and his multi-

1 engine ratings back, and his certificates back. Mr. Patel  
2 testified he worked with the Respondent to train him. Mr. Patel  
3 testified the Respondent told him that his conviction had to do  
4 with his medical application. Mr. Patel also testified that the  
5 Respondent had mentioned his passport as well. He testified that  
6 he referred the Respondent to Mr. Puglia for testing after Mr.  
7 Patel had completed his flight training for Mr. Changur.

8           On cross-examination, he was asked if the Respondent had  
9 indicated his medical certificate had been revoked. Mr. Patel  
10 testified the Respondent had told him that his medical certificate  
11 had been denied because of the wrong birth date on his medical  
12 certificate. There was no redirect of this witness.

13           In response to my questions, he testified that the  
14 Respondent told him that there was a wrong birth date on his  
15 medical, and that the FAA had revoked his license. After my  
16 questioning, counsel for the Respondent asked again if the  
17 Respondent mentioned his passport and his medical certificate when  
18 he spoke to him, and Mr. Patel stated that he had.

19           I found him to be generally credible. It is not clear  
20 how long he has known the Respondent nor did he testify as to the  
21 extent of their interactions.

22           Mr. Samuel Kedem then testified for the Respondent. He  
23 testified he's a resident clinical psychologist at Borinquen  
24 Medical Center. He has a Bachelor's of Science degree in  
25 Psychology, a master's in clinical psychology, and is currently

1 working on his doctoral dissertation after having completed his  
2 coursework for his doctorate degree.

3 Mr. Kedem testified that Mr. Changur was one of his  
4 clients, that he saw him in July of 2012 because Mr. Changur was  
5 suffering from anxiety related to his career problems. When he  
6 was asked by Respondent's counsel if Mr. Changur had mentioned his  
7 criminal convictions, Mr. Kedem testified that the Respondent told  
8 him he had had a felony conviction for falsifying his airman  
9 medical application.

10 Respondent's counsel then asked if Respondent had  
11 mentioned his passport, and Mr. Kedem testified that he had, that  
12 the Respondent had mentioned his passport and that there had been  
13 trouble regarding the date of birth on his medical application and  
14 the date of birth on his passport.

15 There was no cross-examination of this witness, and I  
16 found his testimony, as short as it was, to be credible.

17 The Respondent testified on his own behalf. He is 33  
18 years old, born November 26, 1979, and he was born in Georgetown,  
19 Guyana. He came to the U.S. when he was 21, seeking political  
20 asylum. He was granted entry pending a hearing on his asylum  
21 request, or asylum petition. He was provided a green card so he  
22 could find work. Prior to his hearing on his asylum request, he  
23 married his wife, who is a U.S. citizen, and she sponsored him as  
24 a citizen. At that point he testified that he had asked that his  
25 asylum request be dismissed.

1           He testified he has a daughter who's 10 years old, who  
2 lives with her mother in North Carolina. He did not testify as to  
3 whether they were divorced or separated. He testified he became a  
4 naturalized citizen in 2010.

5           Mr. Changur testified he worked with the airlines first  
6 as a customer service agent in the United States, and then began  
7 working as a flight attendant at U.S. Airway Express. He began  
8 his flight training in March of 2003 at Clearwater Aviation  
9 Academy in Florida. He testified that while working as a flight  
10 attendant, he was able to commute to Florida to take his flight  
11 lessons. He testified he achieved his private pilot certificate,  
12 his commercial pilot certificate, I believe he said, his  
13 instrument rating and his multi-engine certificate during the  
14 period from August 2003 to May of 2004, which is less than a year.

15           He went on, he testified, to Gulfstream Academy to train  
16 in their first officer program. He then worked for CommutAir as a  
17 first officer, and then he worked for them as a captain. He then  
18 went to Colgan Airlines, where it was determined by the company  
19 that he could not be rated as a captain and the Respondent left  
20 that employment.

21           He then went to Wisconsin Air, but was subsequently  
22 furloughed. He then worked with Amerijet and was again  
23 subsequently furloughed there, as well, due to the economy. He  
24 applied for a job with Qatar Airlines and was offered a position;  
25 however, that offer was withdrawn, according to Mr. Changur, when

1 Qatar Airlines learned of his [medical condition].

2 He testified he was then hired by Spirit Airlines, and  
3 when he was hired, that airline identified the discrepancy in his  
4 date of birth. He testified that he asked them for an opportunity  
5 to correct that discrepancy, but he testified that he was not  
6 given an opportunity to do so by Spirit Airlines. He testified  
7 that that started the process that led to the criminal action.

8 He testified that after the criminal action was brought,  
9 he pled guilty to the charges because, as he stated, he had his  
10 daughter to support. He thought it would be best to plead guilty  
11 to the charges. He testified that there were two federal agents  
12 present at the hearing and the signing the documents during the  
13 criminal proceedings. One representative was from the Department  
14 of Transportation and the other from Homeland Security. He  
15 testified he believed that the plea agreement was signed in April  
16 of 2012, and the judgment was issued on July 27, 2012.

17 As to his revocation of his ATP, he and his lawyer met  
18 with Mr. Dixon, the attorney in this case as well. He testified  
19 that Mr. Dixon was kind enough to agree to a 6-month revocation  
20 based on negotiations with his lawyer. That was agreed to, rather  
21 than a 1-year revocation.

22 Mr. Changur testified he told Amerijet about the  
23 conviction and was placed on a leave of absence. He testified  
24 that -- he stated that he started his retraining and got his  
25 license back on August 14, 2012. He then informed the chief pilot

1 at Amerijet about regaining his license, and he was told to report  
2 the information to the head of security, a man whose name is  
3 described by Mr. Changur as Douglas. He testified he did not know  
4 Douglas's last name.

5 Mr. Changur testified he sent Douglas an e-mail and sent  
6 him a copy of the judgment in the criminal case. He later  
7 received a call from Amerijet to go to training, and after that,  
8 he began flying for Amerijet. He testified that in August of  
9 2012, he went through an airman medical evaluation; he checked  
10 "No" to question 18(w). He testified that he had been through so  
11 much during the course of the year that he just thought that  
12 question 18(w) only involved or related to traffic convictions.  
13 He testified he had always thought that question 18(w) asked for  
14 traffic convictions. He testified he should have been a lot more  
15 careful. In response to his counsel's question as to whether he  
16 made a mistake as to question 18(w), he responded, "Yes, I was  
17 careless."

18 He testified that he went to another airman medical  
19 examiner to correct, he believed, to correct the problem. He said  
20 that he filled out the application for a Dr. Diaz, and she  
21 conducted the examination and issued a medical certificate the  
22 same day. That medical application is at Exhibit R-1, page 2, and  
23 is dated April 4, 2013. And the date of the signed medical  
24 certificate is May 22, 2013. So Dr. Diaz signed the medical -- or  
25 signed the certificate on May 22, 2013, and, apparently, as

1 Mr. Changur testified, he filled out the application online in May  
2 of 2013.

3 He also testified that the outcome in this case would  
4 affect his probation. He also testified that he had already been  
5 discharged from Amerijet; however, he testified that they were  
6 waiting to hear from him as to the outcome of this case. And he  
7 testified the chief pilot, Captain Cook, is still backing him.  
8 Captain Cook was subpoenaed to testify in this hearing, but he did  
9 not appear at the hearing and did not testify.

10 On cross-examination, in response to a question as to  
11 whether he happened to read the instructions for filling out the  
12 medical form, he responded, and I quote, "I read them briefly."  
13 He was then asked to read into the record the instructions as to  
14 how to fill out 18(w). He testified that he had told Mr. Patel,  
15 Mr. Puglia and Mr. Kedem about his convictions. He testified that  
16 he had misunderstood, again, question 18(w) only applied to  
17 traffic convictions. There was no redirect of Mr. Changur.

18 In response to my questions, he testified he went to  
19 Dr. Diaz to try to correct the mistakes he made in his medical  
20 application in August of 2012. He said he thought that the second  
21 medical application would supersede the first and correct the  
22 problem. He testified that he was told by his counsel in the  
23 criminal case to do so; however, he also acknowledged and  
24 testified that he was not told by his criminal lawyer that  
25 completing a second application and examination would supersede

1 the application in issue in this case or correct the problem.

2 In response to my questions as to how he understood  
3 18(w) to mean traffic convictions when the question reads:  
4 History of nontraffic conviction(s) (misdemeanor or felony), when  
5 nontraffic is one word - not two words, non and traffic --  
6 nontraffic is on the form as one word. He testified that he  
7 always thought it only related to traffic convictions. He never  
8 had a traffic conviction, and therefore, he had never filled out  
9 18(w).

10 He testified that he had no reason to lie on his medical  
11 application form after he had been through so much, and he  
12 testified that it was a mistake. When I asked him if his  
13 conviction for falsification and misuse of his passport and the  
14 conviction under 18 USC 1001 for false statements in his medical  
15 applications were also the result of a mistake, he testified, no,  
16 he had intentionally made those false statements.

17 When I asked him why Captain Cook did not testify, he  
18 testified he believed the legal department at Amerijet may have  
19 had a problem with his testifying. His counsel represented to the  
20 Court that he was not called because he was not needed, even  
21 though he had been subpoenaed. Counsel also indicated that he  
22 believed that Captain Cook was not available.

23 The only reason I mention Captain Cook is that  
24 Mr. Changur testified that Captain Cook was always supportive of  
25 him and his attempts throughout the course of his experience with

1 his criminal investigation and his conviction, as well as the  
2 proceedings that have led us here today.

3 I will now discuss the testimony and how it relates to  
4 the issues I have to decide. The Board has adhered to a three-  
5 prong standard to prove falsification and falsification claims.  
6 The Administrator must prove by a preponderance of reliable,  
7 probative and credible evidence that a pilot (1) made a false  
8 representation; (2) in reference to a material fact; (3) with  
9 knowledge of the falsity of that fact.

10 The three-part test derives, as it's been discussed by  
11 both attorneys in this case, from the case of Hart v. McLucas, 535  
12 F.2d 516 and 519. That was the Ninth Circuit, decided in 1976.  
13 The Board has also held that a statement is false concerning a  
14 material fact under the standard if the alleged false fact could  
15 influence the Administrator's decision concerning the issuance of  
16 a certificate or compliance with the regulations. The Board has  
17 also held that the three-prong test can be proven by  
18 circumstantial evidence.

19 Applying the facts and evidence in this case to the  
20 three-prong standard, I have to first address whether there's a  
21 false representation in this case. There does not appear to be  
22 dispute that there is a false representation in this case as to  
23 the answer to question 18(w) on the Respondent's August 16, 2012  
24 medical application. The Respondent admits to the allegation in  
25 paragraph 3 of the Administrator's complaint that he pled guilty

1 and was convicted in U.S. District Court, Southern District of  
2 Florida, of false statements in the application and use of a  
3 passport, a felony, in violation of 18 USC Section 1542, and he  
4 also pled guilty to false statements, a felony, in violation of 18  
5 USC 1001.

6 He also admits to the allegation in paragraph 4, which  
7 states that he answered in the negative to question 18(w)  
8 regarding whether he had a history of nontraffic convictions that  
9 were misdemeanors or felonies.

10 Respondent does not dispute in any way that his answer  
11 to question 18(w) was false. He does, of course, dispute as to  
12 whether or not he had knowledge of that falsity at the time he  
13 answered the question at 18(w).

14 Thus, based on the evidence before me, I find that the  
15 evidence establishes by a preponderance of the evidence that the  
16 Respondent made a false representation in his response to question  
17 18(w) in his August 16, 2012 medical application.

18 The second question I have to address is, whether that  
19 false representation is material. The Board has held that a  
20 statement is false concerning a material fact if the alleged fact  
21 could influence the Administrator's decision in issuing a  
22 certificate or issuing a medical certificate.

23 The Respondent does not dispute the fact that the false  
24 representation was material in this case. The Respondent's  
25 counsel acknowledged that Board's precedent holds that all of the

1 questions on the medical application are material, despite the  
2 fact that Respondent's Counsel may not believe that all of the  
3 questions are material.

4           Respondent admitted to paragraph 5 of the allegations,  
5 which he signed the medical application below the statement which  
6 indicates, "I hereby certify that all statements and answers  
7 provided by me on this application form are complete and true to  
8 the best of my knowledge, and I agree that they are to be  
9 considered part of the basis for the issuance of any FAA  
10 certificate to me."

11           Certainly, the aviation medical examiner and the FAA  
12 could be influenced by the Respondent's false representation that  
13 he did not have nontraffic felony convictions in making their  
14 determination that the Respondent is entitled to have a medical  
15 certificate. Therefore, I find that the false representation in  
16 this case is a material false representation.

17           The last question I have to decide is whether the false  
18 representation was made with knowledge of the falsity of that  
19 fact. Now, that is the more difficult question. Question 18(w)  
20 asks the applicant to check a "Yes" or "No" box if he has a  
21 history of nontraffic convictions, misdemeanor or felony. Counsel  
22 for Mr. Changur argued that this case essentially turned on  
23 whether or not I believe Mr. Changur's testimony as to his  
24 subjective understanding as to the wording of question 18(w). He  
25 cites the Dillmon case that indicates the pilot's subjective

1 understanding of the question must be considered in determining  
2 whether or not the false representation was made with knowledge of  
3 the falsity of that fact.

4           Thus, the Respondent argues that, again, the case  
5 essentially turns on whether I believe Mr. Changur, that he  
6 subjectively misunderstood the wording of question 18(w) of his  
7 August 16, 2012 medical application form, and that he believed it  
8 was only in reference to traffic convictions.

9           He testified that question 18(w) only related to traffic  
10 convictions. He testified he always thought, throughout his years  
11 in aviation and in filling out other medical application forms,  
12 that 18(w) only related to traffic convictions. He testified he  
13 should have been a lot more careful. He testified he was careless  
14 in answering the question. He testified he reviewed the  
15 instructions for filling out the medical application form, but he  
16 did so only briefly.

17           The Respondent argues that there was no reason for him  
18 to lie on the medical form. He argues that he has no reason to  
19 lie on that form, as he was honest when he told the FAA designated  
20 flight examiner, Mr. Puglia, about his conviction and revocation  
21 of his license. He testified that there was no reason to lie  
22 because he told the flight instructor, Mr. Kamal Patel, about his  
23 felony convictions and his revocation of his license. He argues  
24 that he had no reason to lie because he told Mr. Kedem, his  
25 clinical psychologist, about his convictions and the revocation of

1 his license. And he had no reason to lie because he had told his  
2 employer, Amerijet, and Douglas, the head of security at Amerijet,  
3 about his conviction and the revocation of his ATP certificate.

4 The testimony of Mr. Puglia and Mr. Patel establishes  
5 that the Respondent, in fact, was not truthful with them. At the  
6 time he spoke to Mr. Puglia and Mr. Patel, the Respondent had been  
7 convicted of two felonies: one for a false statement in an  
8 application and use of a passport, and a felony conviction for  
9 false statements relative to his false statements on his  
10 applications for an airman medical certificate on August 18, 2010  
11 and September 26, 2011.

12 Mr. Puglia testified that he had to ask the Respondent  
13 if the revocation related to drugs. The Respondent told him it  
14 was not related to drugs. Mr. Puglia testified that the  
15 Respondent told him that the conviction was related to his  
16 passport, it was related to the dates on his passport regarding  
17 the Respondent's date of birth. That is what the Respondent told  
18 Mr. Puglia.

19 When Mr. Puglia was asked if Respondent indicated that  
20 one of his felony convictions was related to his medical  
21 certificate, Mr. Puglia responded no. He testified that the  
22 Respondent told him that the conviction was due to a mistake as to  
23 his date of birth on his passport. According to Mr. Puglia, the  
24 Respondent testified that it was the passport agency that had made  
25 the mistake.

1           Mr. Puglia's testimony clearly establishes that when the  
2 Respondent discussed his felony conviction, he did not tell  
3 Mr. Puglia, the FAA designated examiner, that one of his felony  
4 convictions was based on the falsification of two of his medical  
5 applications.

6           The Respondent was not truthful with Mr. Patel, as well.  
7 Mr. Patel initially testified the Respondent told him his felony  
8 conviction had to do with his medical. But, then, on further  
9 questioning, on direct examination by Respondent's counsel, Mr.  
10 Patel testified that the Respondent had mentioned his passport, as  
11 well, in his conversations with Mr. Patel.

12           Mr. Patel did not testify as to what specifically  
13 Respondent told him as to how his passport related to his  
14 conviction; however, Mr. Patel did testify that the Respondent had  
15 told him that his medical was denied because of a wrong birth date  
16 on the form. He testified that Mr. Changur told him that there  
17 was a wrong birth date on his medical application so the FAA  
18 revoked his license. In fact, the revocation of his ATP  
19 certificate had nothing to do with the wrong birth date on this  
20 medical application, but, rather, the revocation was based on  
21 Respondent's falsification of his August 18, 2010 and his  
22 September 26, 2011 airman medical application forms. The  
23 testimony of Mr. Patel also clearly establishes that the  
24 Respondent misrepresented why his ATP license was revoked when he  
25 sought flight training from Mr. Patel.

1           The Respondent sought psychological assistance from  
2 Mr. Sam Kedem, who testified that Mr. Changur went to see him  
3 related to anxiety due to his career problems. However,  
4 Mr. Kedem's testimony also established that Mr. Changur  
5 misrepresented to him the basis for his conviction on the  
6 falsification of his medical. The Respondent told Mr. Kedem his  
7 conviction was due to an incorrect date of birth on his medical  
8 application. He did not tell his healthcare provider that the  
9 falsification on his medical was due to the fact that he did not  
10 disclose an illness.

11           While Mr. Changur may not have had a duty to report  
12 every specific of his convictions to these witnesses, these  
13 witnesses were presented as character witnesses as to his  
14 character for honesty and truthfulness. While he may not have  
15 been -- required to tell them, essentially, everything about his  
16 convictions, he decided to present them as witnesses to prove that  
17 he had told them and to prove he was honest about his convictions  
18 and the revocation of his airline transport pilot.

19           As to the Respondent's testimony about his e-mail to  
20 Douglas at Exhibit R-2, the Respondent's e-mail indicates, and I  
21 quote, "I made a stupid mistake" -- well, first, let me say  
22 Douglas is the head of security for Amerijet. And in that e-mail,  
23 the Respondent indicates, and I quote, "I made a stupid mistake.  
24 An incorrect date of birth was on my passport and I never  
25 corrected it. I went to obtain my FAA medical and used my

1 passport for identification. The same incorrect date of birth was  
2 put on my FAA medical and once again, I did not do anything to  
3 correct it. I did not think it was a big deal, but now I realize  
4 what a devastating mistake it was, and I have learned an extremely  
5 valuable lesson that I will take with me forever."

6 Respondent in that e-mail to Douglas did not indicate  
7 that his conviction for 18 USC 1001 was based on falsification of  
8 his medical certificates. He testified that he attached a copy of  
9 the judgment and that explained everything to Douglas. Therefore,  
10 it appeared that by giving Douglas the judgment, it was left to  
11 Douglas to figure out what the convictions were specifically all  
12 about. Specifically, his conviction, based on 1001, was not  
13 related to a date of birth error on his medical application, but  
14 was based on his falsification of those medical applications  
15 because he did not disclose his medical condition.

16 The fact that he gave Douglas a copy of the judgment  
17 that should have explained everything to Douglas, does not nullify  
18 the fact that he told Douglas in his e-mail that the FAA problem  
19 was based on an incorrect date of birth. That simply is not true.  
20 Also, despite the fact that the Respondent represented to his  
21 employer that it was a stupid mistake, he pled guilty to the  
22 felony. Furthermore, Respondent testified under oath in this  
23 case, that his conviction was based on his intentional conduct.  
24 That was in response to my question as to whether or not those  
25 previous convictions were based on mistakes.

1           Respondent presented his witnesses as proof that he is  
2 honest and disclosed his convictions openly and completely to the  
3 witnesses that testified, and that proves that he has no reason to  
4 lie because he was honest with everyone he had come in contact  
5 with relative to his convictions and to the revocation of his  
6 license. Unfortunately, the Respondent's witnesses' testimony  
7 established that he made misrepresentations to each one of his  
8 witnesses. He told them half-truths, at best, and outright lies  
9 in the worst cases. Their testimony, instead, shows the  
10 Respondent cannot be trusted to tell the truth. The Respondent's  
11 witnesses did not lend any support for his character to honesty  
12 and truthfulness.

13           As to the Respondent's testimony, again, question 18(w)  
14 asks the applicant to check "Yes" or "No" if there is a history of  
15 nontraffic convictions, misdemeanors or felonies. The Board has  
16 stated that question 18(w) is short and uncomplicated in footnote  
17 11 of the Administrator v. Boardman case. In the case  
18 of Administrator v. Martinez, the Board affirmed Administrative  
19 Law Judge Geraghty's granting of a motion for summary judgment,  
20 which stated that question 18(w) cannot be found to be confusing.

21           In Administrator v. Sue, the Board has held that the  
22 placement under the heading of "Medical History" the question  
23 about traffic and other convictions are not confusing to a person  
24 of ordinary intelligence. Thus, a person of ordinary intelligence  
25 should be able to understand question 18(w).

1           In the Dillmon case, the D.C. Circuit Court held that an  
2 airman's subjective interpretation is relevant to whether he  
3 offered an intentionally false statement.

4           I have listened to Mr. Changur's testimony. He is an  
5 accomplished aviator. He obtained his private pilot, commercial  
6 pilot certificate, instrument and multi-engine rating in less than  
7 a year. He obtained an ATP certificate, the highest and most  
8 difficult and most prized airman certificate that can be obtained.  
9 During his testimony, he presented as an intelligent, articulate  
10 man. I cannot find that such an accomplished aviator who is  
11 clearly above ordinary intelligence, as demonstrated by his  
12 aviation accomplishments, could not understand the meaning of  
13 question 18(w).

14           I do not find his testimony credible that he thought  
15 question 18(w) only applied to traffic violations. The question  
16 reads nontraffic, n-o-n-t-r-a-f-f-i-c, one word. He had no reply  
17 as to how he could read that word to mean traffic convictions,  
18 other than to say he always believed the question was in reference  
19 to traffic convictions. His testimony that he should have been  
20 more careful in filling out the form was reckless and that he only  
21 read the instructions briefly, do not help his case.

22           I carefully considered his testimony that he would have  
23 no reason to lie on his medical application after all he had been  
24 through. However, I cannot believe that after all he had been  
25 through -- his criminal conviction, the revocation of his ATP, his

1 retraining, his retesting -- that he would not have read question  
2 18(w) carefully. I simply can't understand that.

3           In addition, I do not find him credible because, as I've  
4 previously discussed, he's made misrepresentations to the various  
5 witnesses he called to testify as to his character for honesty and  
6 truthfulness.

7           Finally, in weighing the Respondent's credibility, it  
8 cannot be ignored that the Respondent had two felony convictions  
9 based on false statements. He pled guilty to those charges. He  
10 testified that those convictions were based on his intentional  
11 falsifications. He testified to that under oath today. That  
12 establishes that the Respondent is capable of making and has made  
13 false statements in the past. One of those convictions  
14 specifically dealt with the falsification in his applications for  
15 medical certificates in 2010 and 2011. Here we are again dealing  
16 with the falsification of a medical certificate. Certainly, a  
17 conviction based on falsification of a medical certificate should  
18 at least lead a person of above-average intelligence to read each  
19 question carefully.

20           Accordingly, I've listened to Mr. Changur's testimony as  
21 to the subject interpretation of question 18(w) as required by  
22 the Dillmon case. I weighed his testimony and the testimony of  
23 his witnesses and all the evidence as he offered in the support of  
24 his case. Based on the evidence, I cannot find Mr. Changur to be  
25 a credible witness. I do not find his testimony to be credible,

1 that he believed the question at 18(w) was only in reference to  
2 traffic convictions and I do not believe him when he testified  
3 that he made a mistake.

4           The Administrator argues that, based on Mr. Changur's  
5 testimony in this case, that this matter should be decided based  
6 on the case of Administrator v. Boardman and Administrator v.  
7 Cooper. Those cases essentially hold that a failure to read and  
8 consider a question on a medical application carefully before  
9 providing an answer, did not establish a defense to allegations  
10 that the Respondent made a knowingly false entry on a medical  
11 certificate.

12           I agree with the Administrator to the extent that  
13 Mr. Changur's testimony that he should have been more careful in  
14 filling out the form, that he was reckless in filling out the  
15 form, that he had only read the instructions briefly, do not  
16 establish a defense to the allegation that he made knowingly false  
17 entries in his medical application.

18           Based on all of the evidence before me, I must find that  
19 the Administrator has proven by a preponderance of the reliable,  
20 probative and credible evidence, that the Respondent made false  
21 representation in his answer to question 18(w) in this case and he  
22 made that false representation with knowledge of the falsity in  
23 that fact when he made that entry. Thus, I must find that the  
24 Administrator has proven all of the elements of the Hart v.  
25 McLucas test by a preponderance of reliable, probative and

1 credible evidence.

2           Now, as to affirmative defenses, while the Respondent  
3 did not plead an affirmative defense, he has made arguments that  
4 since agents from the Department of Transportation, Office of the  
5 Inspector General and Homeland Security were involved in the  
6 criminal proceedings, that the FAA already knew the Respondent's  
7 convictions and, therefore, that the Administrator's -- if I  
8 understood correctly, the Administrator's allegations are  
9 inconsistent.

10           The fact that Department of Transportation, Office of  
11 the Inspector General representatives and representatives from  
12 Homeland Security and, perhaps the Flight Standards District  
13 Office, and Special Agent Buczek were aware of the conviction,  
14 that does not absolve the Respondent from truthfully completing  
15 his medical certificate application. Even if the FAA knew of the  
16 conviction, that does not render the statements by the Respondent  
17 any less false.

18           The issue is not whether the Respondent reported the  
19 conviction to the FAA or that the FAA knew of the conviction. The  
20 issue before me is whether or not the Respondent made a false  
21 statement on his medical application. Therefore, if this is an  
22 affirmative defense, I do not find that that affirmative defense  
23 has been proven by a preponderance of evidence.

24           FINDINGS OF FACT AND CONCLUSIONS OF LAW

25           Having discussed the evidence and the testimony in this

1 case, I will now make findings of facts and conclusions of law,  
2 and to do that, I will use the Administrator's Emergency Order of  
3 Revocation.

4           As I've indicated, the Respondent has admitted to the  
5 allegations in paragraph 1, 2, 3, 4, 5. As to paragraph 6, I find  
6 that the Administrator has proven by a preponderance of the  
7 evidence that Mr. Changur's answer to question 18(w) and his  
8 certification, as described above, were fraudulent or  
9 intentionally false in that, at the time of his medical  
10 certification application, you had a felony conviction that's  
11 listed in paragraph 3.

12           I find that the Administrator has proven by a  
13 preponderance of the evidence, that as a result of falsifying the  
14 above-mentioned medical certificate application, you lack the  
15 qualifications to be the holder of an airline transport pilot  
16 certificate or any airman or airman medical certificate.

17           I find that the Administrator has proven by a  
18 preponderance of evidence that as a result of the violation of  
19 67.403(a)(1) of the Federal Aviation Regulations, that no person  
20 may make or cause to be made a fraudulent or intentionally false  
21 statement on an application for medical certificate, or a request  
22 for any authorized or special issuance of a medical certificate  
23 authorization or statement or demonstrated ability under this  
24 part. The Administrator has proven the elements of this  
25 violation.

1 Paragraph 9 speaks for itself. It is recitation of  
2 Section 67.403, which indicates that commission by any person of  
3 an act prohibited under paragraph (a) of this section is a basis  
4 for a suspension or revocation of all airman ground, instructor  
5 and medical certificates or ratings held by that person.

6 The Respondent admits -- paragraph 10. That completes  
7 the findings of facts and conclusions of law I find in this case.

8 Having found that the Administrator has proven the  
9 alleged violations of the Federal Aviation Regulations by a  
10 preponderance of probative, reliable, credible evidence, I now  
11 turn to a sanction imposed by the Administrator in this case.

12 In addressing the sanction in this case, I must note  
13 that on August 3rd, 2012, Public Law 120-153, known as the Pilot's  
14 Bill of Rights, was signed into law by the President of the United  
15 States. That law became effective immediately. The Pilot's Bill  
16 of Rights specifically strikes from 49 U.S.C. 44709 language which  
17 provides that in cases involving airman's certificate denials, the  
18 Board is bound by all validly adopted interpretations of law and  
19 regulations that the Administrator carries out, unless the Board  
20 finds an interpretation is arbitrary, capricious, or otherwise not  
21 in accordance with the law.

22 The Pilot's Bill of Rights also strikes from 49 U.S.C.  
23 44709 and 44710 language that in cases involving amendments,  
24 modifications, suspensions and revocations of an airman's medical  
25 certificate, the Board is bound by all validly adopted

1 interpretations of law and regulations the Administrator carries  
2 out and the written agency guidance available to the public  
3 related to sanctions to be imposed under this section, unless the  
4 Board finds an interpretation is arbitrary, capricious, or not in  
5 accordance with the law.

6           That language was stricken from the law. While I'm no  
7 longer bound to give the deference to the FAA by statute, the  
8 agency, as the Administrator argues, is entitled to the judicial  
9 deference due to all other federal agencies under the Supreme  
10 Court decision in Martin v. Occupational Safety and Health Review  
11 Commission and others. That is at 499 U.S. 144, 111 S.Ct. 1171  
12 (1991). In applying the principles of judicial deference to the  
13 interpretations of laws and regulations and policies that the FAA  
14 Administrator carries out, I must analyze and weigh the facts of  
15 every case individually to determine whether or not the sanction  
16 selected by the Administrator is appropriate.

17           In this case, the Administrator is asking me to take  
18 judicial notice of the sanction guidelines and argues that  
19 revocation is the appropriate remedy in this case. The  
20 Administrator argues that deference is to be shown to the  
21 Administrator based on the legislative history in this case, and  
22 statements by Senator Rockefeller, Senator Inhofe and also by  
23 members of the House, that the wording of the statute was simply  
24 deleted because it was redundant.

25           I do find that without the deleted language, that I'm no

1 longer bound by the statute. However, that the agency is entitled  
2 to the degree of deference that any other executive agency is  
3 entitled to.

4 The Respondent has not argued that there are mitigating  
5 factors I should consider in determining the appropriate sanction  
6 in this case. Respondent argues, understandably, that I should  
7 find for the Respondent. However, he also argues that, should I  
8 find for the Administrator, the appropriate sanction would be a  
9 suspension in the form of suspension to the time already served.

10 The Respondent has argued, also, about the deletion of  
11 the language under the Pilot's Bill of Rights, which I've read  
12 into the record. And, certainly, again, I find that the  
13 Administrator is entitled to the same deference that any other  
14 executive agency is entitled to. I may decide to give it more  
15 weight, I may not, depending on the case at hand.

16 In this case, as I've stated, I do not find the  
17 Respondent's claim that he misunderstood question 18(w) to be  
18 credible. I do not find him to be credible in his testimony in  
19 this case. The Board precedent firmly establishes that even one  
20 intentional falsification compels the conclusion that the  
21 falsifier lacks the necessary care, judgment and responsibility  
22 required to hold any airman's certificate. That holding is in the  
23 case of Administrator v. Berry, NTSB Order EA-2689. That's a 1988  
24 case, prior to the development of the Administrator's sanction  
25 guidelines and prior to the Pilot's Bill of Rights.

1           I find, therefore, that the sanction sought by the  
2 Administrator is appropriate and warranted in the public interest  
3 in air commerce and air safety. Therefore, I find that the  
4 emergency order, the complaint herein, must be and shall be  
5 affirmed as issued.

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ORDER

IT IS ORDERED THAT the Administrator's Order of Revocation, the complaint herein, be, and is hereby, affirmed as issued. Any and all airmen certificates held by the Respondent, including his Airline Transport Pilot's Certificate (omitted), as well as any and all airman medical certificates that he holds are hereby revoked.

This order is entered this 10th day of July, in Miami, Florida.

EDITED DECISION  
JULY 26, 2013

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ALFONSO J. MONTAÑO  
Chief Administrative Law Judge

APPEAL

ADMINISTRATIVE LAW JUDGE MONTAÑO: Now, as to the appeal rights, I've indicated, Mr. Changur, that I've handed out the appeal rights, which Mr. Goldstein is very -- is familiar with. He's an experienced aviation lawyer.

There is a very tight time frame in which the appeal has to be made in this case, since it's an emergency case. Any party to this emergency proceeding may appeal this oral initial decision -- and I'm reading from the sheet I've handed to both parties -- by filing a written notice of appeal within 2 days after the date on which it was rendered. An original and three copies of the

1 notice of appeal must be filed with the National Transportation  
2 Safety Board. And the address is included in the sheet I've  
3 handed out.

4           It also reads that the party must also perfect the  
5 appeal by filing a brief in support of the appeal within 5 days  
6 after the date on which the notice of appeal was filed. The brief  
7 shall be served by either overnight mail or fax, confirmed by  
8 first-class mail directly with the National Transportation Safety  
9 Board, Office of General Counsel, and that address is also  
10 included.

11           Mr. Changur, this is my oral initial decision. It's  
12 not a decision that I enjoy issuing or making. I am bound by the  
13 facts. I am bound by the law, and I have to make judgments as to  
14 credibility.

15           You have a right to appeal, which is the beauty of the  
16 legal system. The appeal, as your attorney will tell you, will be  
17 up to members of the full Board, and they will review my decision  
18 to determine if I made an error of law, if I abused my discretion  
19 in my findings as to credibility. Based on their review, they may  
20 decide, one, to reverse my decision, or they may decide to remand  
21 the case for further proceedings, which will have to be quickly  
22 done because it is an emergency case, or they may affirm my  
23 decision.

24           There is an appeal to the Court of Appeals of the  
25 Federal District Court, from the final Board decision. From

1 there, to the Supreme Court of the United States. But, certainly,  
2 my word or my oral initial decision in this case is not the final  
3 decision by a long shot, should you decide to appeal.

4           It is difficult to see such an accomplished aviator face  
5 this type of decision. It was not an easy decision for me to  
6 make. I weighed everything and considered your testimony very  
7 carefully. I understand the ramifications. I'm not happy with  
8 the decision I have to make, but it's a decision I have to make  
9 because I'm bound by the law and I'm bound by the way that I  
10 viewed the credibility in this case.

11           I wish you the very best in any appeal that you make or  
12 take and in your future.

13           I thank you all very much. And that ends my oral  
14 initial decision. Thank you, and have a safe trip home.

15           (Whereupon, at 4:10 p.m., the hearing in the above-  
16 entitled matter was adjourned.)

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CERTIFICATE

This is to certify that the attached proceeding before the

NATIONAL TRANSPORTATION SAFETY BOARD

IN THE MATTER OF: Kelvin R. Changur

DOCKET NUMBER: SE-19510

PLACE: Miami, Florida

DATE: July 10, 2013

was held according to the record, and that this is the original, complete, true and accurate transcript which has been compared to the recording accomplished at the hearing.

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Mabel Vargas  
Official Reporter