

SERVED: October 8, 2014

NTSB Order No. EA-5729

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 7th day of October, 2014

_____	)	
MICHAEL P. HUERTA,	)	
Administrator,	)	
Federal Aviation Administration,	)	
	)	
Complainant,	)	
	)	Docket SE-19535
v.	)	
	)	
GLEN DAVID SIWARSKI,	)	
	)	
Respondent.	)	
	)	
_____	)	

**OPINION AND ORDER**

**1. Background**

Respondent appeals the oral initial decision of Administrative Law Judge Stephen R. Woody, issued January 24, 2014.<sup>1</sup> By that decision, the law judge determined the Administrator proved respondent violated 14 C.F.R. §§ 61.59(a)(2) and 61.153(c)<sup>2</sup> when he falsified

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

<sup>2</sup> Section 61.59(a)(2) prohibits making, or causing to be made, “[a]ny fraudulent or intentionally false entry in any logbook, record, or report that is required to be kept, made, or used to show

endorsements for four different airmen, to indicate the airmen had all completed proficiency checks in an HU-16/G1111 (Grumman Albatross), in compliance with 14 C.F.R. § 61.58.<sup>3</sup> We deny respondent's appeal of this emergency order of revocation.<sup>4</sup>

*A. Facts*

Respondent was an aviation safety inspector at the Federal Aviation Administration's (FAA's) Flight Standards District Office (FSDO) in Reno, Nevada, from August 2009 until November 2013. On July 23, 2012, the FAA placed respondent on administrative leave, but required him to remain available in the Reno area, in case the FAA needed his services. In November 2013, the FAA dismissed respondent from his position because he failed to maintain the current certifications necessary to fulfill his duties as an inspector.

While on administrative leave on February 1, 2013, respondent traveled to Boulder City, Nevada, and provided endorsements to two pilots in a Grumman Albatross. Both endorsements stated the pilots had "satisfactorily completed a pilot proficiency ... flight per 61.58 [in] a HU-16-G111 dated 2-1-2013," and both endorsements included a "VFR" notation, indicating the

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(..continued)

compliance with any requirement for the issuance or exercise of the privileges of any certificate, rating, or authorization under this part." Section 61.153(c) states a person must "be of good moral character" in order to be eligible for an airline transport pilot (ATP) certificate.

<sup>3</sup> Section 61.58, titled, "Pilot-in-command proficiency check: Operation of an aircraft that requires more than one pilot flight crewmember or is turbojet-powered," states, in part, that a person must, within the preceding 12 calendar months, complete a pilot-in-command proficiency check in an aircraft that is type certificated for more than one required pilot flight crewmember. Section 61.58 also lists numerous, specific requirements pilots must fulfill in completing the proficiency check.

<sup>4</sup> The Administrator initiated this case as an emergency under 49 U.S.C. §§ 44709(e) and 46105(c). Respondent subsequently waived the expedited procedures normally applicable to emergency cases.

flights were performed under visual flight rules.<sup>5</sup> On February 6, 2013, respondent returned to Boulder City and flew with two other pilots, after which he provided them endorsements stating the pilots satisfactorily had completed “the flight review [required] by § 61.56-61.58.”<sup>6</sup> Respondent did not enter these endorsements in each pilot’s logbook, but instead handed them each an FAA safety card containing the endorsement.

At the hearing, all four pilots testified they traveled to Boulder City in early February 2013, specifically to complete their proficiency examinations.<sup>7</sup> The pilots were aware the Federal Aviation Regulations required them to complete such an examination on an annual basis. Because the Grumman Albatross is an aircraft requiring two pilots for operation, the pilots knew 14 C.F.R. § 91.5 required a “proficiency check” pursuant to § 61.58, rather than a simple “flight review” under § 61.56.<sup>8</sup>

Expert witness Norbert Schuchbauer, an FAA air carrier specialist, testified 14 C.F.R. § 61.58 encompasses § 61.56. Section 61.58 requires a proficiency flight examination on an annual basis; in this regard, a pilot has no reason to complete a check ride *solely* under § 61.56.<sup>9</sup>

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<sup>5</sup> Exhs. A-36 at 3 and A-39 at 8.

<sup>6</sup> Exh. A-45 at 4, 11. One of the two endorsements includes a dash to separate §§ 61.56 and 61.58; the other endorsement includes a slash to separate the two references.

<sup>7</sup> Tr. 103, 117, 135, 144-45. Each year, pilots meet at the airport in Boulder City for a “splash in,” where they have an opportunity to complete their proficiency checks with a designated examiner.

<sup>8</sup> FAA expert witness, Mr. Schuchbauer testified 14 C.F.R. § 91.5 requires an examination under § 61.58, because § 91.5 “in essence states that every aircraft that requires more than one pilot has—those pilots, that pilot in command has to have a 61.58. The requirement for an aircraft to be operated by more than one pilot is stipulated in a type certificate data sheet which is the basis for certification.” Tr. 177. The Administrator’s attorney introduced a copy of Grumman Albatross type certificate data sheet into evidence. The type certificate states the aircraft requires two crew members. See Exh. A-17.

<sup>9</sup> Tr. 176-77.

Only examiners with specific authorization may conduct proficiency examinations under § 61.58; either an FAA inspector or a designated pilot examiner who is not an FAA employee may hold such a credential.<sup>10</sup> In addition, the proficiency check flights are noted in the pilot's logbook, as well as the endorsement indicating the pilot successfully has completed the proficiency examination.

*B. Procedural Background*

The Administrator issued the emergency revocation order, which became the complaint in this case, on July 31, 2013, alleging respondent violated 14 C.F.R. § 61.59(a)(2) and was ineligible to hold an ATP certificate under § 61.153(c). Respondent waived the application of emergency procedures, and the case proceeded to hearing before the law judge on January 22-24, 2014.

*C. Law Judge Oral Initial Decision*

At the conclusion of the hearing, the law judge found the Administrator proved respondent falsified the endorsements indicating the four pilots satisfactorily had completed pilot proficiency examinations under 14 C.F.R. § 61.58. The law judge summarized the testimony and evidence received at the hearing, and explained the requirement for a pilot proficiency examination, as provided by §§ 91.5 and 61.58.

The law judge determined the Administrator fulfilled all three prongs of the intentional falsification test. He based this determination on his credibility findings, which were not favorable to respondent. The law judge stated respondent's answers to several questions were evasive, and respondent's explanation that he actually intended to provide flight reviews only

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<sup>10</sup> Tr. 182-83 (Mr. Schuchbauer's testimony: "[a] pilot proficiency examiner is basically a non-FAA person that is working for the FAA, you know. And so on an annual basis those individuals need to be evaluated, and they are being evaluated by another aviation safety inspector so they can renew their authorization to conduct those pilot proficiency checks").

under § 61.56 was not credible, because each of the endorsements he wrote listed both §§ 61.56 and 61.58. In this regard, the law judge dismissed respondent's affirmative defense of mistake, stating "respondent's explanation would be far more believable if he had only included references to § 61.58."<sup>11</sup> The law judge also stated the theory pilots would arrange to travel to Boulder City for a flight review under § 61.56 was nonsensical. The law judge further buttressed his adverse credibility assessment by stating respondent testified, despite his type rating in the Grumman Albatross, he did not know until the time of the hearing that an annual proficiency check under § 61.58 was required to operate the aircraft, and did not know the difference between a flight review under § 61.56 and a proficiency check under § 61.58. The law judge determined no evidence supported the notion that each pilot individually altered their proficiency check paperwork, and that respondent's own records belied his contention that he coincidentally was in Boulder City at the time of the annual splash-in.

In addressing respondent's argument the Administrator failed to provide respondent with timely notification of the pending certificate action under the Pilot's Bill of Rights, the law judge stated the statute does not require *immediate* notice of the action, but rather the Administrator must provide "timely" notification.<sup>12</sup> The law judge listed the applicable dates on which the Administrator took certain actions, and determined the notification, dated May 10, 2013, the

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<sup>11</sup> Initial Decision at 430. The law judge's assessment was based on the fact respondent listed *both* regulations, rather than listing only § 61.58 and later argued the reference was simply a typographical error.

<sup>12</sup> *Id.* at 441; see also Pilot's Bill of Rights, Pub. L. No. 112-153, 126 Stat. 1159, § 2(b)(1) (stating, "the Administrator of the Federal Aviation Administration ... shall provide timely, written notification to an individual who is the subject of an investigation...under chapter 447 of title 49, United States Code").

Administrator provided respondent was timely.<sup>13</sup> The law judge affirmed the Administrator's sanction of revocation, based on the Board's jurisprudence in intentional falsification cases.

#### *D. Issues on Appeal*

Respondent appeals the law judge's decision on four main bases. First, respondent contends the law judge erred in determining the Administrator did not violate the Pilot's Bill of Rights by failing to provide to respondent timely notification of the pending enforcement action. Respondent argues the law judge erred in allowing Mr. Schuchbauer to provide expert testimony "without an expert report," and to include matters not set forth in the pre-trial statement.<sup>14</sup> Respondent further asserts the law judge erred in determining he intentionally falsified the endorsements when respondent used his certified flight instructor certificate. Finally, respondent contends the law judge erred in reviewing his FAA employment related documents after the Administrator's attorney "assured the Court that little, if any, employment documents would be used at the hearing."<sup>15</sup>

## **2. Decision**

On appeal, we review the law judge's decision *de novo*, as our precedent requires.<sup>16</sup>

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<sup>13</sup> Id. at 438 (finding an FAA employee from a different district was appointed to investigate respondent's actions; one week later, the investigator began collecting information and opened an enforcement investigation report on May 8, 2013; and the investigator subsequently sent a letter of investigation to respondent on May 10, 2013).

<sup>14</sup> Appeal Br. at 4 and 13.

<sup>15</sup> Id. at 4 and 20.

<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).

A. *Timely Notification*

We affirm the law judge's finding the Administrator provided respondent timely notification of the enforcement action. Respondent focuses on FAA employees' interviews concerning his employment status, and argues he could have received notification as early as February 14, 2013, when his supervisor at the Reno FSDO, called him about the proficiency checks. Respondent further contends the FAA could have provided notification at an April 3, 2013 meeting he had with FAA personnel concerning a personnel action.

We disagree. Respondent has not shown the Administrator contemplated taking enforcement action against his airman certificate during either the February 14 phone call or the April 3 meeting. As the law judge stated, the Administrator's evidence shows he appointed an employee to investigate the enforcement case weeks *after* the April 3 meeting, and the investigator did not begin collecting information and open an enforcement investigation report until May 8, 2013. As at the hearing, on appeal, respondent attempts to combine the activity occurring in his employment action with the actions taken for purposes of the certificate action. Respondent's appeal brief includes the term "regarding this certificate action" in his description of the February 14 phone call and the April 3 meeting. However, the record clearly establishes the phone call and the meeting resulted from the FAA personnel action; indeed, a union representative's attendance at the April 3 meeting supports the fact the purpose of the meeting was to discuss the employment matter. Overall, we conclude the Administrator's notification to respondent of the pending certificate enforcement action was timely.

B. *Expert Testimony*

Respondent contends the law judge erred in admitting the expert testimony of Mr. Schuchbauer, an FAA employee, who testified an aviation safety inspector with respondent's

background would know 14 C.F.R. § 61.58 encompasses § 61.56, and that the Grumman Albatross requires a proficiency check under § 61.58.<sup>17</sup> Specifically, Respondent argues because the FAA failed to provide an expert report as required by Federal Rules of Civil Procedure (FRCP) the law judge erred. Respondent also raised relevancy objections.

We review law judges' evidentiary rulings under an abuse of discretion standard, provided a respondent can also show he or she suffered prejudice as a result of the rulings at issue.<sup>18</sup> We find the law judge did not abuse his discretion in considering the expert testimony.

The Federal Rules of Civil Procedure (FRCP) apply to appeals of airman certificate enforcement actions.<sup>19</sup> FRCP 26(a)(2)(B) requires parties to provide a report from each expert who a party will call to testify when the expert "is retained or specially employed to provide expert testimony in the case or whose duties as an employee of the party regularly involve giving expert testimony." The report must contain a variety of information, such as the expert's qualifications, a complete statement of all opinions the witness will express and the basis and reasons for them. Respondent's attorney objected when Mr. Schuchbauer answered questions regarding his review of respondent's employment applications, arguing he was unaware Mr. Schuchbauer would testify concerning these records, because the Administrator's attorney failed to provide an expert report. In this case because the expert is an FAA employee, the law judge did not err when he found that FRCP 26(a) did not require an expert report in all cases.

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<sup>17</sup> Tr. 176-77, 180.

<sup>18</sup> See, e.g., Administrator v. Martz, NTSB Order No. EA-5352 (2008); Administrator v. Giffin, NTSB Order No. EA-5390 at 12 (2008); Administrator v. Zink, NTSB Order No. EA-5262 (2006); Administrator v. Van Dyke, NTSB Order No. EA-4883 (2001).

<sup>19</sup> Pilot's Bill of Rights, Pub. L. No. 112-153, 126 Stat. 1159, § 2(a).

At the start of Mr. Schuchbauer's testimony, respondent's attorney also raised a general relevancy objection to the witness testifying concerning respondent's knowledge or intent to falsify. The law judge instructed respondent's attorney to raise these relevancy objections during the testimony at the appropriate times.<sup>20</sup> In his testimony, Mr. Schuchbauer summarized documents in respondent's airman file, which include applications for a glider rating and a rotorcraft rating within a 6-month period that show an increase in flight time of 900 hours.<sup>21</sup> However, the law judge excluded Mr. Schuchbauer's opinion testimony as to whether respondent lacked credibility in completing his FAA employment application, finding the relevancy of such testimony tenuous.<sup>22</sup> Because the law judge excluded this opinion testimony regarding the relevancy of respondent's airman file to his credibility, we find no prejudice to respondent.

On appeal, respondent relies on Administrator v. Coats,<sup>23</sup> arguing the Board previously has affirmed a law judge's exclusion of expert testimony when the party seeking to call the expert failed to provide an expert report under FRCP 26(a). However, the facts of Coats are distinguishable from those in the case *sub judice*. In Coats, the respondent sought to testify on his own behalf, both as a fact and expert witness, without providing advance notice to the Administrator. In the case at issue, the Administrator identified Mr. Schuchbauer as an expert witness and proffered the scope of his testimony in pretrial disclosures.<sup>24</sup> At the hearing,

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<sup>20</sup> Tr. 161-62.

<sup>21</sup> Tr. 169-170 (opinion that a 900-hour increase in flight time within a 6-month period is "rather excessive"); Exh. A-7.

<sup>22</sup> Tr. 175.

<sup>23</sup> NTSB Order No. EA-5710 at 11 (2014).

<sup>24</sup> Administrator's Response to Respondent's First Set of Interrogatories and Request for Production at 2, ¶ 3 (September 11, 2013). At the hearing, the Administrator's attorney asked

Mr. Schuchbauer's testimony was consistent with this proffer, and respondent had the opportunity to object to questions and cross-examine Mr. Schuchbauer. Overall, we find the law judge did not err in permitting Mr. Schuchbauer's testimony.

*C. Intentional Falsification*

With regard to the issue of intentional falsification, we long have adhered to a three-prong test. The Administrator must prove an airman: (1) made a false representation, (2) in reference to a material fact, and (3) with knowledge of the falsity of the fact.<sup>25</sup> In Administrator v. Dillmon,<sup>26</sup> after remand from the Court of Appeals for the District of Columbia Circuit,<sup>27</sup> we clarified our analysis of this three-prong test. We consider our law judges' credibility findings, as well as other relevant evidence, concerning a respondent's subjective understanding with respect to the third prong of the test. We defer to our law judge's credibility findings unless those findings are arbitrary and capricious.<sup>28</sup> In Administrator v. Porco, we also held the law judge's credibility determination should be based explicitly upon factual findings in the record.<sup>29</sup>

In this case, we find the Administrator fulfilled his burden of proof. The law judge determined, and respondent does not dispute, the Administrator fulfilled both the first and second

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(..continued)

Mr. Schuchbauer questions concerning his experience, to lay the foundation to qualify him as an expert witness under Federal Rule of Evidence. Tr. 155-58; see also Federal Rule of Evidence 702. Respondent did not object to his qualification as an expert witness. Tr. 161.

<sup>25</sup> Hart v. McLucas, 535 F.2d 516, 519 (9<sup>th</sup> Cir. 1976) (citing Pence v. United States, 316 U.S. 332, 338 (1942)).

<sup>26</sup> NTSB Order No. EA-5528 (2010).

<sup>27</sup> 588 F.3d 1085 (D.C. Cir. 2009).

<sup>28</sup> Administrator v. Porco, NTSB Order No. EA-5591 at 13 (2011), affirmed by 472 Fed.Appx. 2 (D.C. Cir. 2012).

<sup>29</sup> Id. at 22, 28-29.

prongs of the test. Concerning the third prong of the test, the law judge provided a detailed credibility finding, determining respondent's testimony was not credible regarding his state of mind when he provided the endorsements.

Based on Porco, we find no reason to disturb the law judge's credibility determinations as they were not arbitrary and capricious. Respondent claims he merely signed off on the endorsements for the four pilots as a certified flight instructor, under 14 C.F.R. § 61.56. However, as the law judge noted, respondent's notations on the safety cards he provided each pilot include a reference to § 61.58. In addition, the law judge found respondent's testimony that he did not know the difference between a flight review under § 61.56 and a proficiency check under § 61.58 was "less than credible."<sup>30</sup> Given respondent's experience in aviation—in particular, with the Grumman Albatross—we agree with this assessment. The law judge also noted respondent was evasive on cross-examination and in response to the law judge's questions. The record certainly supports this determination.<sup>31</sup> Therefore, we affirm the law judge's determination respondent intentionally falsified the endorsements by indicating he had conducted proficiency evaluations under § 61.58.

#### *D. Employment Documents*

Finally, respondent contends the law judge erred in considering his employment documents concerning his employment history with the FAA. As noted above, we review law

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<sup>30</sup> Initial Decision at 432.

<sup>31</sup> In lieu of answering "yes" or "no" to certain questions on cross-examination, respondent repeatedly answered "that's a fair assumption." Tr. 323, 324, 325, 327, 328, 330, 332, 339, 340, 346, 355. In addition, on cross-examination, respondent often claimed he did not recall events; however, during direct examination, respondent provided detailed descriptions, indicating a clear recollection.

judges' evidentiary rulings under an abuse of discretion standard, and the respondent must show he or she suffered prejudice as a result of the rulings.

Again, we find the law judge did not abuse his discretion. Respondent objected to the testimony of Michael Becker, the office manager at the Reno FSDO, on the basis of relevancy of such testimony because it related to respondent's employment action. The law judge permitted Mr. Becker's testimony, cautioning the Administrator's attorney to focus on the certificate enforcement action, rather than the employment matter. During Mr. Becker's testimony, the Administrator introduced the memorandum informing respondent of the conditions of his administrative leave.<sup>32</sup> Respondent did not object to this document's admission.

Furthermore, we find no prejudice to respondent as, in the instant case, respondent's disregard for the conditions of his leave was relevant to respondent's credibility and his overall willingness to adhere to standards. In addition, respondent's attorney questioned respondent concerning his employment at the FAA.<sup>33</sup>

**ACCORDINGLY, IT IS ORDERED THAT:**

1. Respondent's appeal is denied;
2. The law judge's decision is affirmed; and
3. The Administrator's emergency revocation of respondent's ATP certificate is affirmed.

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

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<sup>32</sup> Tr. 44; Exh. A-31.

<sup>33</sup> Tr. 278.

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. \*

GLEN DAVID SIWARSKI, \*

Respondent. \*

\* \* \* \* \*

Docket No.: SE-19535  
JUDGE WOODY

National Labor Relations Board  
2600 North Central Avenue  
Suite 1400  
Phoenix, Arizona 85004

Friday,  
January 24, 2014

The above-entitled matter came on for hearing, pursuant  
to Notice, at 8:30 a.m.

BEFORE: Stephen R. Woody,  
Administrative Law Judge

## APPEARANCES:

On behalf of the Administrator:

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## ORAL INITIAL DECISION AND ORDER

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ADMINISTRATIVE LAW JUDGE WOODY: This is a proceeding under the provisions of 49 United States Code Section 44709 and the provisions of the Rules of Practice in Air Safety Proceedings of the National Transportation Safety Board.

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The matter has been heard before this Administrative Law Judge, and as provided by the Board's Rules, I've elected to issue an Oral Initial Decision.

14

Pursuant to notice, this matter came on for hearing on January 22 through 24, 2014, in Phoenix, Arizona. The Administrator was represented by Lisa Toscano and Theodore Byrne of the Western Pacific Region, Regional Counsel's Office. Respondent was represented by Mr. Joseph Lamonaca.

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The parties were afforded a full opportunity to offer evidence, to call, examine and cross-examine witnesses, and to make arguments in support of their respective positions.

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I will not discuss all of the evidence in detail. I have, however, considered all the evidence, both oral and documentary, and that which I do not specifically mention is viewed by me as being corroborative or as not materially affecting

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1 the outcome of this decision.

2 The Respondent, Glen D. Siwarski, has appealed the  
3 Administrator's Emergency Order of Revocation dated July 31, 2013.  
4 Pursuant to the Board's Rules, the Administrator filed a copy of  
5 that order on August 7, 2013, which serves as the complaint in  
6 this case. The Respondent subsequently waived his right to an  
7 expedited proceeding in this matter.

8 The Administrator ordered the emergency revocation of  
9 Respondent's air transport pilot, or ATP, certificate and any  
10 other airman certificate held by him based on his alleged  
11 violations of Section 61.59(a)(2) and 61.153(c) of the Federal  
12 Aviation Regulations, or FAR, codified at 14 CFR.

13 More specifically, the Administrator's complaint alleges  
14 that in early February 2013, the Respondent, who was at the time  
15 was not authorized or qualified to provide airman proficiency  
16 checks, intentionally falsified records relating to four airmen:  
17 Stephen Ritland, Kevin Knutsen, David Cummings, and Daniel  
18 Hammond, to reflect that they had satisfactorily completed valid  
19 proficiency checks in a Grumman HU-16/G111 Albatross aircraft in  
20 compliance with the requirements of 14 CFR 61.58.

21 The complaint further alleges that by reason of the  
22 intentionally false records made by the Respondent, he  
23 demonstrated that he lacks the good moral character required of an  
24 airline transport pilot certificate holder.

25 In his answer, as amended, to the Administrator's

1 complaint, and based on stipulations offered at the beginning of  
2 this hearing, Respondent admitted to paragraphs 1, 2, 4, 5, 8, 9,  
3 10, 11, 16, 17, 18 and 19 of the complaint. As Respondent has  
4 admitted to those allegations, they are deemed as established for  
5 purposes of this decision. Respondent has denied or otherwise  
6 indicated his inability to answer the remaining paragraphs of the  
7 complaint.

8 Administrator's Exhibits A-1 through A-57 were admitted  
9 into evidence. Respondent's Exhibit R-1 was admitted into  
10 evidence.

11 The Administrator presented the testimony of Michael  
12 Becker, Harold Jones, Kevin Knutsen, Daniel Hammond, Richard  
13 Eilinger, Dr. Stephen Ritland, David Cummings, and Norbert  
14 Schuchbauer.

15 Michael Becker testified that he is the office manager  
16 for the Reno Flight Standards District Office, or FSDO, and has  
17 been since March of 2008. He's been employed by the FAA since  
18 1998. He holds an A&P mechanic certificate. Mr. Siwarski began  
19 working full-time at the Reno FSDO in November of 2010.

20 Mr. Becker was his second-level supervisor. He indicated  
21 Mr. Siwarski was never authorized under the 4040 program to  
22 administer proficiency checks.

23 He testified Mr. Siwarski expressed an interest in being  
24 assigned to perform proficiency checks in the Grumman Albatross in  
25 January of 2011. Mr. Siwarski had a type rating in the aircraft

1 along with a personal interest in the aircraft. At the time  
2 Mr. Becker told him no because he was not yet fully up to speed in  
3 his duties as an aviation safety inspector, or ASI, and because  
4 Mr. Becker saw no great need to have such an assignment within the  
5 office. Mr. Becker agreed to consider the request further once  
6 Mr. Siwarski became proficient in his ASI duties.

7           Mr. Becker identified Exhibit A-31 as a memorandum to  
8 Mr. Siwarski regarding his placement on administrative leave. He  
9 explained the contents of the memo to the Respondent, who signed  
10 acknowledging the memorandum, and was given a copy. Mr. Becker  
11 read the letter or memorandum aloud to the Respondent. The terms  
12 of the administrative leave required the Respondent to call in at  
13 7:30 and 1600 daily and to remain in the area and available for  
14 duty. If he planned to leave the area, Respondent was to request  
15 and be approved leave ahead of time.

16           Next, Mr. Harold Jones testified that he's the frontline  
17 manager at the Reno FSDO for the past two and a half years. As  
18 the frontline manager, he was the direct supervisor for the  
19 Respondent. Mr. Jones indicated that on March 27, 2012,  
20 Respondent's participation in the 4040 program was suspended. The  
21 decision was made by the Flight Standards Division, Human  
22 Resources, pending the outcome of a personnel investigation. At  
23 that point he was placed on administrative duties. All Events  
24 Based Currency training, or EBC, training was suspended. He was  
25 to remain in the office and he had no use of government vehicles.

1           On July 23, 2012, Mr. Siwarski was placed on  
2 administrative leave. He was not to come into the office, but was  
3 required to be available during normal duty hours, if needed. He  
4 had to call the office at 7:30 and 1600 daily, was not to have  
5 outside employment, and could not travel outside of the area  
6 without preapproved leave. He was required to turn in his ASI  
7 credentials and keys to the office, but he was allowed to keep his  
8 FAA ID card. Mr. Siwarski was never authorized to conduct  
9 proficiency checks while at the Reno FSDO, including while he was  
10 on administrative leave.

11           Mr. Jones testified further that on November 1, 2012, he  
12 called Mr. Siwarski into his office after he was late calling in  
13 because he was working. Exhibit A-32 documents the substance of  
14 his conversation with Mr. Siwarski that day. Mr. Siwarski  
15 initialed next to each paragraph, indicating his understanding.  
16 Mr. Siwarski also signed the form, but included the words "from  
17 this day forward." During that meeting, Mr. Siwarski also  
18 tendered a request for outside employment.

19           On or about February 13, 2013, Mr. Jones indicated he  
20 learned of an e-mail from a certified flight instructor asking how  
21 he could schedule a proficiency check with Mr. Siwarski.

22           On February 14, 2013, when the Respondent called in,  
23 Mr. Jones asked if he had been performing proficiency checks, and  
24 Mr. Siwarski indicated he had performed flight reviews but no  
25 proficiency checks. Mr. Jones informed him that he could not do

1 flight reviews within the district and could not do pilot  
2 proficiency checks.

3           On April 3, 2013, Mr. Jones indicated he conducted a  
4 Weingarten meeting with Mr. Siwarski. Mr. Jones had received a  
5 call from frontline manager Wilkinson in Las Vegas asking why  
6 there was an inspector from Reno, that being the Respondent, doing  
7 proficiency checks in his district. During the meeting,  
8 Mr. Siwarski was asked to produce his logbooks. He stated they  
9 were in his desk and had been unused since he went on  
10 administrative leave. After twice searching the desk without  
11 finding the logbooks, Mr. Siwarski indicated that they might be at  
12 his home. Mr. Jones called back later to follow-up on the  
13 logbooks and was told by Mr. Siwarski they might be in the moving  
14 boxes in the garage, and he would attempt to find them. The  
15 logbooks were never produced.

16           Mr. Jones indicated he asked for the logbooks in April  
17 to determine if Mr. Siwarski had logged time in the Albatross in  
18 Boulder City. He was asking as a supervisor to see if he logged  
19 time as a pilot in command or performed proficiency checks as he  
20 had been told. An ASI does not always log time when he's not at  
21 the controls of an aircraft, but many pilots log all flight time.  
22 Mr. Jones knew at the time he made the request to Mr. Siwarski  
23 that Mr. Siwarski was a certificated ATP pilot.

24           Next Mr. Richard Eilinger testified that he is an  
25 aviation safety inspector with the Portland, Maine FSDO. He's

1 been an ASI for 18 years, the past 15 at Portland. He is an ATP  
2 pilot type rated in a number of aircraft, including the Grumman  
3 Albatross. He holds an A&P mechanic's certificate with inspection  
4 authorization and is a flight instructor. Mr. Eilinger is  
5 familiar with pilot proficiency checks under Federal Aviation  
6 Regulation Section 61.58. Under FAR Section 91.5, a pilot in  
7 command is required to meet the requirements of Section 61.58 for  
8 any aircraft requiring more than one pilot flight crew member,  
9 such as the Albatross. A 61.58 proficiency check is required  
10 annually. The proficiency check can be done by an ASI qualified  
11 and authorized to do so or by a designated pilot examiner or pilot  
12 proficiency examiner, which I will refer to as a DPE or PPE. And  
13 those individuals are designated by the FAA to conduct those  
14 proficiency checks.

15           Mr. Eilinger conducted proficiency checks in the  
16 Albatross in February 2012 in Boulder City, Nevada. This was part  
17 of an annual fly-in. He had contact with Mr. Siwarski in 2011 by  
18 phone to discuss conducting the proficiency checks. Mr. Siwarski  
19 made it known that he was type rated in the Albatross, but  
20 indicated he couldn't do the proficiency checks because of turmoil  
21 in the office, which Mr. Eilinger understood to mean that he did  
22 not have the necessary authorization to conduct the proficiency  
23 checks.

24           He also had contact with Dennis Buehn about the  
25 proficiency checks in Boulder City. Mr. Buehn then had to contact

1 his FSDO and request authorization. That request was forwarded to  
2 AFS-60, who had to issue the authorization, which was specific to  
3 the location and one-week period in which to conduct the  
4 proficiency checks. Mr. Eilinger went to Boulder City in February  
5 2012 and conducted proficiency checks for Mr. Buehn, Dr. Ritland,  
6 Mr. Hammond, Mr. Cummings, Mr. McLellan and others.

7           Mr. Eilinger was contacted again in January 2013 by  
8 Mr. Siwarski about again conducting annual proficiency checks in  
9 Boulder City in February 2013. Mr. Eilinger informed  
10 Mr. Siwarski that he likely wouldn't be able to do so because of  
11 demands on him at the Portland FSDO, including duties as the  
12 acting frontline manager.

13           Mr. Eilinger indicated the proficiency checks involved  
14 an oral examination, preflight, and flight test, after which he  
15 filled out the FAA Form 8410-1, which is a required form for an  
16 ASI conducting a proficiency check. A logbook endorsement is not  
17 sufficient. Exhibit A-5, page 13, is a copy of that Form 8410-1  
18 used to document the proficiency check.

19           Flight review under Section 61.56 is different and can  
20 be conducted by a certified flight instructor. A flight review is  
21 not a pass/fail, and is required only biennially. It includes one  
22 hour of ground and one hour of flight training. It is documented  
23 as a logbook endorsement, either a satisfactory completed flight  
24 review or simply noted as additional training rather than a flight  
25 review.

1           A proficiency check is a pass/fail exercise, and will be  
2 noted on the form. PPEs also sometimes use the form in addition  
3 to ASIs. As an ASI, he knows that a flight instructor cannot  
4 conduct a proficiency check and would question a signature that  
5 only includes a CFI endorsement. Prior to being an ASI, he did  
6 not spend much time with the regulations unless he needed them,  
7 and testified he wasn't sure that he would have known a CFI  
8 endorsement on a proficiency check was not sufficient.

9           Mr. Kevin Knutsen testified that he went to Boulder  
10 City, Nevada, on February 1, 2013, to get a proficiency check in  
11 the Grumman Albatross. He understands it is required annually,  
12 and he has done one annually in Boulder City for the past 24  
13 years, almost always in February.

14           In Boulder City, he met with Mr. Siwarski. Then they  
15 went to the aircraft to conduct the exam. He believes  
16 Mr. Siwarski showed him his FAA ID. He was given an oral exam on  
17 the flight systems, which lasted approximately 20 minutes. The  
18 flight check lasted about one and a half to two hours, and  
19 included typical maneuvers for a proficiency check, essentially  
20 the same as he as experienced for the past 23 years. He testified  
21 he understood it to be a pass/fail proficiency check, and  
22 afterwards he was given a card by Mr. Siwarski stating he had  
23 satisfactorily completed a pilot proficiency flight check, a PC,  
24 per AFI [sic] 61.58. A copy of the card is at Exhibit A-39, page  
25 8. Mr. Siwarski did not make any entry in Mr. Knutsen's logbook.

1           Mr. Knutsen never met or spoke with Mr. Siwarski before  
2 the exam, and is not sure how it was arranged. He simply went to  
3 Boulder city with Dr. Ritland in Dr. Ritland's aircraft, as he  
4 typically did. He did not pay anything for the proficiency check.  
5 The card he received is an FAA safety card that can be found in  
6 any FBO. He usually receives a card rather than a form upon  
7 completion of his proficiency check.

8           Daniel Hammond testified that he holds ATP and  
9 commercial pilot certificates as well as CFII. On February 6,  
10 2013, he went to Boulder City, Nevada to conduct a proficiency in  
11 a Grumman Albatross. Mr. Hammond understood Mr. Siwarski was an  
12 FAA examiner and would conduct the proficiency check. They got  
13 together at the aircraft, discussed aircraft systems, and then  
14 conducted the flight check. There was no classroom instruction.  
15 During the flight, Mr. Siwarski told Mr. Hammond what procedures  
16 or maneuvers to perform. He also informed Mr. Hammond when he had  
17 completed the check, as there were others who were also doing  
18 proficiency checks in the aircraft.

19           Exhibit A-45, page 11, is a copy of the card Mr. Hammond  
20 received afterwards indicating he had satisfactorily completed  
21 flight review required by Section 61.56/58 in the Grumman  
22 Albatross. Part of the card was done in blue ink and part in  
23 black ink. Mr. Hammond assumes it was completed by Mr. Siwarski  
24 because it is not in his handwriting, and Mr. Siwarski presented  
25 it to him after the check. Mr. Hammond had his logbook with him

1 on the date of the proficiency check, but Mr. Siwarski made no  
2 endorsement in the logbook. Mr. Hammond understood that he was  
3 getting a proficiency check. The card indicated both were done,  
4 which was okay by him.

5 He had not met Mr. Siwarski or spoken with him before  
6 February 6, 2013. Mr. Hammond had been doing the proficiency  
7 check annually since 2005. In the past it had been set up by  
8 Mr. Dennis Buehn. He received a call from either Mr. Buehn or an  
9 associate saying that the proficiency check was again set up in  
10 2012. Richard, with a last name he could not remember, did the  
11 proficiency check. That was the only year he received a Form  
12 8410-1. Every other year he got a card like the one he received  
13 from Mr. Siwarski in 2013.

14 Mr. Hammond documented the proficiency check in his  
15 logbook as, quote, "BFR/PIC," or biennial flight review/pilot in  
16 command. The endorsement on the card references Mr. Siwarski's  
17 CFI certificate. Mr. Hammond did not question why it indicated  
18 CFI. He did not pay Mr. Siwarski or anyone else money for the  
19 proficiency check. He did pay Mr. Cummings about \$2,000 for the  
20 use of his aircraft for the check. He did not pay Mr. Siwarski  
21 because he understood he was an FAA examiner as opposed to a PPE.

22 Dr. Stephen Ritland testified that on February 1, 2013,  
23 he flew his Grumman Albatross to Boulder City, Nevada, to complete  
24 a recurrent proficiency check ride. He has had the airplane for  
25 20 years and annually has to complete the proficiency check so he

1 is able to fly as a pilot in command for another year. He  
2 completed the check ride with Mr. Siwarski. He was told he passed  
3 and was given a card by Mr. Siwarski indicating he had  
4 satisfactorily completed a pilot proficiency flight, PC, per  
5 61.58, in the Grumman Albatross. A copy of that card is Exhibit  
6 A-36, page 3. He understood that Mr. Siwarski was able to perform  
7 the proficiency check and did not inquire further. He did not pay  
8 for the check because Mr. Siwarski was an FAA employee and not a  
9 PPE. He did not have his logbook with him that day and was never  
10 asked for payment.

11 David Cummings testified he was in Boulder City, Nevada  
12 on February 6, 2013 to complete a proficiency check in a Grumman  
13 Albatross. Exhibit A-18 is a photo of his aircraft that was used  
14 for the check. He knew it was a proficiency check because he had  
15 spoken with Dennis Buehn about it and arranged to meet in Boulder  
16 City for it. Originally, Richard Eilinger was to perform the  
17 proficiency check.

18 Mr. Cummings indicated he met Mr. Siwarski in Boulder  
19 City that day. They discussed the basic outline for the exam.  
20 Mr. Cummings has done probably about 100 proficiency checks, at  
21 least annually, so he is familiar with them. This check was  
22 similar to the others. They completed the check ride, after which  
23 he was given a card by Mr. Siwarski indicating he satisfactorily  
24 completed the flight review per Section 61.56-61.58 on February 6,  
25 2013. Exhibit A-45, page 4 is a copy of the card he was given by

1 Mr. Siwarski. A portion of the card is in blue ink and a portion  
2 in black ink. He assumed Mr. Siwarski wrote it because he gave  
3 the card to him.

4 The program letters for Mr. Cummings' aircraft are at  
5 Exhibit A-20, and they outline what the aircraft will be doing on  
6 a particular date. They indicate it was in Boulder City doing  
7 proficiency checks on February 6, 2013. Mr. Cummings did not pay  
8 for the proficiency check and there was no discussion of payment.  
9 He did not meet with or talk with Mr. Siwarski prior to that day.

10 Mr. Norbert Schuchbauer testified he's employed by the  
11 FAA in the Flight Standards Division as an air carrier specialist.  
12 His main job presently is records audit and review of Program  
13 Tracking Recording System, or PTRS, records. The PTRS system  
14 tracks activities conducted by inspectors. He's also very  
15 familiar with, has participated in and has been responsible for  
16 annual audits on the 4040 program, including the FACTS  
17 recordkeeping system for the 4040 program. His education,  
18 training and experience is set forth more fully in his resume at  
19 Exhibit A-23. Mr. Schuchbauer was qualified and recognized as an  
20 expert in aviation, aviation safety, proficiency checks, the 4040  
21 assignment program, the PTRS recordkeeping system and logbook  
22 endorsements.

23 Mr. Schuchbauer identified Exhibits A-27 and A-28 as  
24 PTRS records for Mr. Siwarski from the Reno FSDO and Helena,  
25 Montana FSDO, respectively. Those were inputted by the

1 Respondent. Exhibit A-30 shows copies of forms used in the 4040  
2 program for Mr. Siwarski from both Helena and Reno. The records  
3 show he completed proficiency check for Part 135 in the Reno area,  
4 but there was no evidence of any Section 61.58 proficiency checks,  
5 which is different and is dictated by FAR Section 91.5. There is  
6 no indication in the records of assignment to do such proficiency  
7 checks.

8           Exhibit A-7 is copies of the blue ribbon file for  
9 Mr. Siwarski, including his two applications for employment with  
10 the FAA. Mr. Schuchbauer was struck by the unusually large jump  
11 in the total flight hours by approximately 1,000 hours in 5  
12 months, as indicated in Exhibit A-7 at pages 13 and 175. The  
13 application also indicated Mr. Siwarski had experience as an  
14 examiner in the U.S. Coast Guard Auxiliary, but he could not find  
15 any evidence of that in the blue ribbon airman records. The  
16 application also listed two type ratings, one for a Citation XL560  
17 and the second for a Piper-46, that he could not find in  
18 Respondent's airman's records. In fact, the Piper is a nontype-  
19 rated aircraft.

20           Mr. Schuchbauer opined that an ASI should know the  
21 difference between a Section 61.56 flight review and a Section  
22 61.58 proficiency check. Also, he indicated that Section 61.189  
23 requires any ground training or flight training performed to be  
24 notated in the logbook. Mr. Schuchbauer also opined that it  
25 doesn't make sense to do a Section 61.56 flight review in an

1 Albatross aircraft. He noted that both Dr. Ritland's and  
2 Mr. Cummings' aircraft per their type certificate data sheets at  
3 Exhibit A-17 require a minimum crew of two pilots. Because they  
4 require more than one pilot, Section 91.5 requires a 61.58  
5 proficiency check annually, which serves to satisfy both Section  
6 61.56 and Section 61.58 requirements. He indicated you gain  
7 nothing by doing a flight review without accomplishing the  
8 required proficiency check, and it is a very expensive aircraft to  
9 fly. Mr. Schuchbauer also indicated that an ASI would not  
10 normally conduct flight reviews since those are not within his  
11 checking and certification activities. A flight instructor would  
12 normally do this.

13           In reviewing Mr. Siwarski's PTRS entries,  
14 Mr. Schuchbauer noted how meticulous the entries were, but he was  
15 struck by how the endorsements for the proficiency checks were not  
16 as accurate. Even if you assume those were flight reviews, there  
17 were no notations in the pilot's logbooks as required.  
18 Mr. Schuchbauer opined that the Southwest Airline trip records for  
19 Mr. Siwarski that are at Exhibit A-14 indicate preplanning. The  
20 trip for February 1, 2013 was booked on January 20, 2013. There  
21 were also two separate trips to Boulder City. The second had a  
22 shared itinerary with Mr. Dennis Buehn, who had discussed  
23 proficiency checks with the airmen and had arranged the annual  
24 checks for a number of years. It also included a flight in the  
25 Albatross back to Burbank and then travel through Las Vegas to

1 Reno.

2           The PTRS records at Exhibit A-25 also show, according to  
3 Mr. Schuchbauer, consistent with Mr. Eilinger's testimony, efforts  
4 by Mr. Siwarski to have Inspector Eilinger conduct Section 61.58  
5 proficiency checks.

6           Looking at the endorsements for the airmen in question  
7 for Mr. Knutsen, the card indicates 61.58 and uses words  
8 proficiency flight check. Dr. Ritland's endorsement indicates  
9 61.58 and proficiency check flight, and has a VFR notation, which  
10 would not be necessary if just a flight review was completed since  
11 those are always conducted in VFR conditions. Both Mr. Cummings'  
12 and Mr. Hammond's specifically reference both Section 61.56 and  
13 Section 61.58. At Exhibit A-45, 20, the preprinted endorsement in  
14 the logbook for a flight review involving Mr. McLellan has been  
15 specifically altered to include Section 61.58 and a VFR-only  
16 notation. Based on all of those facts, Mr. Schuchbauer opined that  
17 the endorsements for the airmen in question were for Section 61.58  
18 proficiency checks in the Grumman Albatross.

19           With respect to the CFI endorsement, Mr. Schuchbauer  
20 indicated that pilots rely on the endorsement received and assume  
21 the individual is authorized to do the check. In this case,  
22 Mr. Buehn had been arranging these annual checks for a number of  
23 years and the pilots had relied on the individuals completing the  
24 checks to be qualified and authorized to do so. The FAA relies  
25 upon the endorsements to determine that an individual is qualified

1 and authorized to operate an aircraft. If there is an  
2 intentionally false endorsement, it is impossible to know if the  
3 individual is truly qualified to operate an aircraft, but they are  
4 nonetheless doing so and creating a threat to air safety.

5           There are a number of items Mr. Schuchbauer identified  
6 as aggravating factors, such as multiple violations, the  
7 intentional or deliberate nature of the offenses, Respondent's  
8 statements to his manager that he did not perform proficiency  
9 checks, the public trust entrusted to him as an ASI to ensure  
10 proficiency checks are done appropriately and in compliance with  
11 the regulatory framework.

12           In forming his opinions, Mr. Schuchbauer interviewed  
13 Mr. Hammond, Mr. Knutsen, Dr. Ritland and Mr. Cummings in  
14 conjunction with the Administrator's counsel. He does not  
15 believe, aside from the deposition that he observed, that it would  
16 have been useful to interview Mr. Siwarski. Mr. Schuchbauer has  
17 no knowledge of other reasons why Mr. Siwarski may have gone to  
18 Boulder City other than to conduct the checks. His opinions that  
19 the trips were preplanned was based on his review of the  
20 documents, as well as conversations with Mr. Eilinger in January  
21 2013 about doing the checks and prior calls in 2011 from the  
22 Respondent to Mr. Eilinger to help arrange proficiency checks in  
23 February 2012.

24           Mr. Schuchbauer indicated although ASIs get extensive  
25 training, he's not aware of what training Mr. Siwarski may have

1 gotten in filling out the Forms 8410-1 or specifically in  
2 conducting Section 61.58 checks. He did not know why Mr. Siwarski  
3 did not use the 8410-1 to document the proficiency check or why  
4 all seven endorsements were not the same.

5           With respect to the CFI endorsement, Mr. Schuchbauer  
6 indicated it is not unusual to see a CFI or certificate number on  
7 an endorsement, and that pilots would likely just assume the  
8 individual was qualified to conduct the check. In this case, this  
9 event had been organized by the same person for a number of years  
10 with many of the same pilots with the same results each year, a  
11 completed Section 61.58 proficiency check. In his opinion, the  
12 pilots had no reason to question if the endorsement was signed by  
13 a CFI.

14           The day of his testimony was the first day that  
15 Mr. Schuchbauer had seen the different colored ink on  
16 Mr. Hammond's and Mr. Cummings' endorsements. He has no idea if  
17 it could have been altered. He also has no idea why two  
18 endorsements reference proficiency flights and the other two say  
19 flight review, even though both Section 61.56 and 61.58 are noted,  
20 but he questioned why the endorsements would even need to include  
21 reference to Section 61.58 if all that was intended was a flight  
22 review. Flight reviews should also have been endorsed in the  
23 logbooks at the same time.

24           The endorsements for Hall, which is Exhibit A-45, page  
25 27, and Novak at A-45, page 24, were not previously seen by

1 Mr. Schuchbauer and he did not interview those airmen. The  
2 endorsements are dated February 4, 2013. The Southwest Airline  
3 records do not indicate that Mr. Siwarski was in Boulder City on  
4 February 4, 2013. It is possible those endorsements have the  
5 wrong date. Those endorsements also cite to Section 61.58 and not  
6 Section 61.56.

7 I found Mr. Schuchbauer to be a very competent and  
8 credible witness, and his conclusions and opinions well supported  
9 by the documentary evidence and citations to relevant authority or  
10 regulatory provisions.

11 The Respondent presented the testimony of Mr. Samuel  
12 White and of Respondent himself, Mr. Glen Siwarski. Mr. White  
13 testified that he's president and owner of Direct Air in Costa  
14 Mesa. He's known Mr. Siwarski since approximately 2007 or 2008  
15 when he was interested in purchasing a Limited Liability  
16 Corporation, or LLC, and was referred to Mr. Siwarski. Mr. White  
17 eventually purchased an LLC from Mr. Siwarski. Mr. White also had  
18 contact with Mr. Siwarski when he was on business in the Virgin  
19 Islands in 2008 and Mr. Siwarski was there and allowed him to fly  
20 with Mr. Siwarski. The two became friends and have kept in touch  
21 since then, seeing one another approximately once every two years  
22 and talking on the phone occasionally about aviation and  
23 airplanes. Both men have a great affinity for seaplanes.

24 Mr. White has talked with others in the aviation  
25 community about Mr. Siwarski and believes he has a superb

1 reputation. Mr. Siwarski has never given Mr. White reason to  
2 doubt his veracity. Mr. White indicated he does not know what the  
3 specific allegations are in this matter. Mr. Siwarski did mention  
4 there were some allegations of fraudulent activity, but Mr. White  
5 did not inquire further.

6           Mr. White indicated that he held Mr. Siwarski in high  
7 regard in part because of his prior military service and status as  
8 a commander in the Coast Guard. When Mr. White purchased the  
9 company from the Respondent in 2008, he asked for a list of  
10 references, who all said nice things about Mr. Siwarski.  
11 Mr. White has not talked with others regarding Mr. Siwarski since  
12 2008 nor has he flown with him since then. Mr. White referred to  
13 Mr. Siwarski as a very knowledgeable inspector. Mr. Siwarski  
14 mentioned some troubles with the FAA, but did not tell Mr. White  
15 he is no longer employed there. Mr. White has no knowledge if  
16 Mr. Siwarski is still with the FAA. His last visit with Mr.  
17 Siwarski was in June 2013 at a seaplane base in Sausalito, where  
18 he assumed Mr. Siwarski was working.

19           I found Mr. White to be a largely credible witness, but  
20 one with little knowledge of the allegations and limited  
21 interaction with the Respondent, particularly in recent years,  
22 and, thus, a limited foundation upon which to offer a useful  
23 assessment of his character for truthfulness or veracity.

24           The Respondent, Glen Siwarski, testified that he is  
25 essentially retired now, that he no longer works with the FAA. He

1 was with the FAA as an ASI from August 2009 to November 2013.  
2 Prior to that, he was a pilot with San Francisco Seaplanes for two  
3 years, and owned his own corporation. He has also worked for a  
4 number of Part 135 and Part 121 carriers. He was a police officer  
5 in Detroit from approximately 1970 to 1984, retiring as a  
6 sergeant. He served on active duty in the Army from 1966 to 1968,  
7 and was in the inactive reserve for a number of years after that,  
8 and has been involved with the U.S. Coast Guard Auxiliary since  
9 about 1977 or '78, where he is currently in inactive status.

10 He stated that he never had any disciplinary problems  
11 and received a number of awards for his service as a police  
12 officer and with the Coast Guard Auxiliary. He has a number of  
13 degrees, including an Associate's degree, a Bachelor's, and a  
14 Master's degree in business marketing, and a Ph.D. in economics.

15 Between January 29 and February 2, 2013, Mr. Siwarski  
16 stated he was in Las Vegas to help his daughter move to a new  
17 apartment. He indicated he had no knowledge of any events  
18 described at Boulder City. He stated he did not talk with  
19 Inspector Eilinger in January of 2013. He had talked with him  
20 once sometime earlier regarding PBY training in Texas. His  
21 daughter picked him up at the airport and they spent a couple of  
22 days packing and moving her. They then took a road trip to the  
23 Boulder area. As he neared the Boulder City Airport, he saw a  
24 Dash-6 and diverted to the airport to check it out.

25 Near the airport, he saw a T-6 that he believed to be

1 Dennis Buehn's. He saw Mr. Buehn working on this aircraft, and  
2 Mr. Buehn invited him in. He had met Mr. Buehn on a number of  
3 occasions previously. Mr. Buehn told him about the splash-in.  
4 Mr. Siwarski indicated Mr. Buehn told him he had a number of  
5 people coming in that needed flight reviews and asked Mr. Siwarski  
6 if he could do the flight reviews, to which he agreed.  
7 Dr. Ritland and Mr. Knutsen arrived around lunchtime, and  
8 Mr. Buehn introduced them all.

9           Mr. Siwarski stated he talked a little with the pilots.  
10 He spent about an hour on ground training and then did a walk-  
11 round before getting in the aircraft to perform maneuvers. The  
12 flight review was basically an hour or so for each pilot.  
13 Afterwards, he did a short brief, and they asked him to fill out  
14 cards, so he did. He then indicated he did not recall doing the  
15 cards since that was not how he would normally do a flight review.  
16 Although the writing on the cards appears to be his, he stated  
17 there were some oddities about how the cards were filled out. He  
18 testified that he never identified himself as an FAA inspector or  
19 presented any credentials, indicating that he had turned in  
20 everything that had been requested from him when he was placed on  
21 administrative leave. After completing the two flight reviews and  
22 participating in some activities in the hangar, he and his  
23 daughter drove to Boulder Dam and to the beach at Lake Meade.

24           On February 2, Mr. Siwarski traveled back to Reno. He  
25 returned to Las Vegas on February 5, 2013, for his daughter's

1 birthday on February 6th. He did not stay in Las Vegas in the  
2 interim few days because he indicated he had other things to do in  
3 Reno. He stated he had no discussions with Mr. Buehn and made no  
4 arrangements to return to Boulder City on February 5th or 6th or  
5 to do other flight reviews on his return.

6           On February 6th, Mr. Siwarski testified that he and his  
7 daughter were heading back to Boulder having no idea that events  
8 there were ongoing. There he again saw Mr. Dennis Buehn who asked  
9 him if he could do more flight reviews. He met Mr. Cummings and  
10 Mr. Hammond and conducted flight reviews for them. They first did  
11 some ground training and then completed the flight maneuvers  
12 including some water work. Mr. Siwarski indicated he recalled  
13 working with Mr. Cummings, but does not recall filling out the  
14 form. He did not recall seeing a card with different colored ink  
15 prior to yesterday. He also vaguely recalls completing the  
16 endorsement for Mr. Hammond, but doesn't recall putting the slash  
17 58 on the endorsement. He stated that would not be normal for a  
18 flight review.

19           At Exhibit R-1, page 6, he remembers doing the  
20 endorsement for Mr. McLellan, but does not remember the  
21 modifications to include the slash 58, the words VFR only or the  
22 reference to the G111. He indicated Mr. McLellan was the only  
23 pilot to present his logbook, even though he asked all of them for  
24 theirs, including Mr. Hammond.

25           Mr. Siwarski indicated he never intended to do a

1 proficiency check under Section 61.58, and had not been trained as  
2 an ASI in how to do 61.58 proficiency checks. As an ASI he has  
3 never done or been requested to do a 65.58 proficiency check. He  
4 did not enter the flight reviews in his own logbook as required.  
5 The last time he saw the logbook was in his desk at the Reno FSDO.  
6 He did not get it when he was asked to leave. He asked for the  
7 logbook back, but has never received it. He indicated that he may  
8 have made some tangential notations in a separate small notebook  
9 for the first two flight reviews. He stated that he received no  
10 compensation for any of the flight reviews.

11           On cross-examination, Mr. Siwarski indicated he now  
12 knows the difference between a flight review and proficiency  
13 check, but he had not been familiar with it previously. He  
14 indicated he believed he had talked with Inspector Eilinger in  
15 approximately 2011, but could not recall talking with him in 2012  
16 and did not believe he talked with him in January 2013. Nor did  
17 they discuss proficiency checks in the Albatross, and Mr. Siwarski  
18 was not familiar with the Boulder City Airport before February 1,  
19 2013 when he was with his daughter and came across the splash-in.  
20 He conceded that his own PTRS entry from 2011 indicates he made  
21 arrangements through Nation Resource requesting 61.58 proficiency  
22 checks in the Grumman Albatross at the Boulder City Airport on  
23 February 1st and 2nd of 2011. That entry references Inspector  
24 Eilinger and notes he previously conducted the check rides for  
25 Mr. Buehn and Mr. Cummings.

1           Mr. Siwarski indicated that he had not seen his logbooks  
2 since February or March of 2012. He stated this was true even  
3 though he indicated in November of 2012 that he was working for  
4 Seaplane Adventure, Incorporated, per Exhibit A-32, page 3. He  
5 indicated that he does not recall showing his logbook to his  
6 employer at the time and did not record any flight time in his  
7 logbook, as he was not required to do so.

8           On his first trip to Las Vegas in February of 2013,  
9 Mr. Siwarski stated that he was not aware of any event in Boulder  
10 City. On his second trip several days later he went back to see  
11 his daughter for her birthday and did not intend to go to the  
12 airport. He testified that he did not make arrangements and did  
13 not intend to meet Dennis Buehn, and he stated this was true  
14 despite the fact that his itinerary on Southwest Airlines had been  
15 shared with Mr. Buehn. Mr. Siwarski indicated that despite the  
16 fact that he had held a type rating in the Grumman Albatross, he  
17 did not know before now that an annual 61.58 proficiency check was  
18 required in that aircraft.

19           With respect to the endorsements for Dr. Ritland,  
20 Mr. Hammond, Mr. Knutsen and Mr. Cummings, Mr. Siwarski conceded  
21 that the handwriting on the cards appeared to be his and that he  
22 handed each gentleman the card after he completed it. He  
23 reiterated that he asked for everyone's logbooks, including  
24 Mr. Hammond, but none of those individuals produced their logbook.  
25 Mr. Siwarski agreed that it was common practice or procedure to

1 endorse a logbook after completing a flight review. In fact,  
2 Federal Aviation Regulations require the entry to identify where  
3 the flight review occurred. None of the endorsements in question  
4 indicated a location nor could he recall whether he had noted VFR  
5 only on the cards initially. Mr. Siwarski indicated that it had  
6 been 10 years since he previously completed a flight review, but  
7 then he conceded that he had completed one for Mr. Dennis Buehn in  
8 2011. Respondent did not enter the flight reviews in his logbook,  
9 noting that he did not have the logbook at the time. He agreed he  
10 could have purchased a logbook in the FBO for that purpose, but he  
11 did not do so.

12           Mr. Siwarski stated that he was on administrative leave  
13 on February 1 and February 6, 2013, but that he did not tell his  
14 managers that he was going to or was in Las Vegas. Nor did he  
15 mention during the meeting in April 2013 that he was unavailable  
16 for duty during the time periods he was in Las Vegas and  
17 conducting flight reviews. When asked if he had turned in his FAA  
18 ID card in addition to his credentials and building key when being  
19 placed on administrative leave, he indicated he had turned in  
20 everything he had been asked for. When asked whether that  
21 included his ID card, he again stated he turned in all that was  
22 requested. Eventually he indicated he could not recall whether he  
23 had turned in his FAA ID card, but insisted that he had not shown  
24 his ID card or identified himself as FAA to any of the individuals  
25 in Boulder City.

1           Mr. Siwarski indicated he is not and was not type rated  
2 in the Citation 560XL, that his FAA employment application  
3 indicating otherwise is an error. So too his application  
4 indicating he had experience in the B727 was incorrect, as was an  
5 entry indicating he was a designated pilot examiner.

6           With the testimony in mind I'll now discuss my analysis  
7 of the allegations in the case.

8           With respect to the alleged violation of Federal  
9 Aviation Regulation 61.59(a)(2), the elements of an intentionally  
10 false statement are: (1) a false representation; (2) in reference  
11 to a material fact, and (3) made with knowledge of its falsity.  
12 Those elements are based on the Hart v. McLucas case, which  
13 counsel referred to a number of times during the proceedings.

14           Here, there is little contention with respect to the  
15 first two prongs of the Hart v. McLucas intentional falsification  
16 test. There is no question that the entries on the endorsement  
17 cards for all four airmen indicating, either in whole or in part,  
18 that they received valid proficiency checks consistent with FAR  
19 Section 61.58 were inaccurate or false. Respondent has conceded  
20 as much, and also admitted that he was not qualified or authorized  
21 to conduct valid proficiency checks.

22           Nor is there any real contention regarding the  
23 materiality of the logbook entries. Again, Respondent stipulated  
24 to materiality, and Mr. Schuchbauer's testimony further confirms  
25 that such entries are relied upon by the Administrator to

1 determine the continued proficiency of the airmen involved.

2           Thus, the last element, knowledge of the falsity of the  
3 entries, is the critical issue to be decided in this case. The  
4 question of the knowledge of the falsity of the endorsements turns  
5 largely on the credibility of the Respondent's explanation,  
6 considered in the context of other testimony and evidence  
7 presented.

8           Respondent has raised mistake as an affirmative defense  
9 in this matter. Specifically, he argues that he made incorrect  
10 but not intentionally false endorsements. More specifically, in  
11 his answer to the complaint, he asserts that he conducted flight  
12 reviews rather than proficiency checks and that he mistakenly  
13 entered the FAR citation to Section 61.58 or to both Sections  
14 61.58 and 61.56, instead of Section 61.56 as intended. During the  
15 hearing, he testified somewhat differently, which I'll address  
16 momentarily.

17           Mr. Knutsen, Dr. Ritland, Mr. Hammond and Mr. Cummings  
18 all testified very consistently concerning the purpose for which  
19 they went to Boulder City in February 2013 and their understanding  
20 of what took place there. That is, they all testified that they  
21 went to Boulder City specifically to complete their annual  
22 proficiency checks in the Grumman Albatross as they had for a  
23 number of years. All understood the proficiency checks had been  
24 arranged with a qualified examiner as it had been annually for  
25 many years. All describe the training as being consistent with

1 proficiency checks that had been provided in years past, and all  
2 received endorsements that were similar to what they had received  
3 for past proficiency checks, save the one year Mr. Hammond  
4 indicated that he received a Form 8410-1.

5           That none of the individuals questioned the CFI  
6 endorsement is certainly understandable given the circumstances  
7 as further supported by the testimony of Mr. Schuchbauer and  
8 Inspector Eilinger in that regard. Their understanding of what  
9 they were receiving is also consistent with and supported by the  
10 endorsement cards themselves, each referencing Section 61.58,  
11 which governs proficiency checks, either alone or in conjunction  
12 with a reference to Section 61.56. Given their history of having  
13 arranged for and conducted their annual proficiency checks in the  
14 Albatross for many years in Boulder City, it simply would not make  
15 sense for these individuals to come to Boulder City in February of  
16 2013 merely for a flight review. And as further noted by  
17 Mr. Schuchbauer and supported by Mr. Hammond's testimony regarding  
18 the amount he paid to Mr. Cummings for flight time, the Albatross  
19 is an expensive aircraft to operate, so using it to conduct only a  
20 flight review that does nothing to satisfy annual proficiency  
21 requirements makes little sense. I found Mr. Knutsen,  
22 Dr. Ritland, Mr. Hammond and Mr. Cummings all to be very credible  
23 witnesses. Not only did they provide testimony consistent with  
24 one another and the documentary evidence, all answered questions  
25 directly and were not at all hesitant or evasive.

1           Now as noted, Respondent asserted that he intended only  
2 to perform flight reviews despite the citations to Section 61.58  
3 on all the endorsements in question. In his answers to the  
4 complaint, he indicated he mistakenly referenced Section 61.58  
5 rather than Section 61.56. Setting aside for the moment other  
6 concerns with credibility of his testimony, that explanation would  
7 be far more believable if all of the endorsements referenced only  
8 Section 61.58. However, it is difficult to reconcile why  
9 citations to both Section 61.56 and Section 61.58 are included in  
10 the endorsements for Mr. Cummings and Mr. Hammond if only a flight  
11 review was intended.

12           Although in his testimony, Mr. Siwarski now questions  
13 whether the endorsements for Mr. Cummings and Mr. Hammond as well  
14 as that for Mr. McLellan at Exhibit R-1, page 6, may have been  
15 altered or whether he even entered references to Section 61.58, he  
16 reluctantly testified on cross-examination that the cards and log  
17 entry all appear to be in his handwriting and that he presented  
18 the cards to the airmen upon completion of the purported flight  
19 reviews. The endorsements for Mr. Hammond and Mr. Cummings,  
20 including the references to Section 58 are very similar to one  
21 another and similar to the modifications to Mr. McLellan's logbook  
22 entry at Exhibit R-1. In order to accept Respondent's suggestion  
23 that the endorsements may have been modified, I would essentially  
24 have to find that the three airmen in question modified their  
25 endorsements and did so in a very similar fashion to falsely

1 reflect that a proficiency check had been completed. I find no  
2 evidence to support such a conclusion.

3 It is also worth nothing that Mr. Siwarski did not raise  
4 any questions or concerns concerning alteration of the endorsement  
5 either in his answer to the complaint, as twice amended, or during  
6 his prior deposition in this matter. And as noted previously, the  
7 annotations in question are also consistent with the proficiency  
8 checks that all the airmen understood took place in February 2013  
9 and which had taken place for a number of prior years.

10 The Respondent suggested that his presence in Boulder  
11 City on February 1 and February 6, 2013 was not planned in any  
12 way, that he had no knowledge regarding the proficiency checks  
13 being conducted in Boulder City in 2013 or in years past, that he  
14 was unfamiliar with the Boulder City Airport until February 1,  
15 2013 and had no knowledge of an annual event conducted there, and  
16 that he had not spoke with Inspector Eilinger or anyone else  
17 regarding 61.58 proficiency checks in Boulder City for the  
18 Albatross, either in past years or in January 2013. Now contrary  
19 to those assertions, Mr. Siwarski's own PTRS entries from 2011  
20 reference Inspector Eilinger and Mr. Siwarski's efforts to arrange  
21 proficiency checks for the Albatross at Boulder City Airport.  
22 That same entry also references Mr. Dennis Buehn, who Inspector  
23 Eilinger and several witnesses confirmed was instrumental in  
24 organizing and arranging the annual proficiency checks at the  
25 Boulder City splash-in, and with whom Mr. Siwarski shared his

1 February 2013 flight itinerary and admittedly dealt with regarding  
2 the purported flight reviews.

3 Further, Mr. Eilinger testified very credibly that he  
4 spoke with Mr. Siwarski each year for several years about the  
5 proficiency checks, most recently in January 2013 regarding the  
6 event in February of 2013, and whether Mr. Eilinger could again  
7 conduct the proficiency checks as he had the past year. Unlike  
8 the Respondent, I find no apparent motivation for Mr. Eilinger to  
9 have fabricated a series of conversations with Mr. Siwarski  
10 regarding proficiency checks for the Albatross in Boulder City in  
11 2013 and years past. Mr. Siwarski's denial of knowledge of the  
12 proficiency checks or any involvement in planning for the event,  
13 especially in light of the very substantial and credible evidence  
14 to the contrary, is simply not credible.

15 I also find less than credible the Respondent's  
16 testimony that he, a highly educated individual with several  
17 degrees, including a Master's degree and a Ph.D. in economics, who  
18 was an aviation safety inspector and an experienced ATP pilot type  
19 rated in the Grumman Albatross, did not understand the difference  
20 between a flight review and a proficiency check or that an annual  
21 proficiency check was required for Albatross pilots.

22 Additional issues or factors cause me to further  
23 question Respondent's veracity and credibility. I found him to be  
24 evasive in answering questions on cross-examination and even in  
25 response to my own questions.

1           For example, he would not directly answer questions  
2 posed to him about whether he had surrendered his FAA ID card when  
3 he was placed on administrative leave, instead repeating several  
4 times that he had turned in everything that he had been directed  
5 to surrender. After several attempts at clarification, he  
6 eventually stated that he did not recall if he kept his ID card.  
7 This information is important, as Mr. Jones indicated Respondent  
8 had to surrender his credentials but was permitted to keep his ID  
9 card, and Mr. Knutsen testified that he saw Respondent's FAA  
10 identification; and Mr. Hammond, Mr. Cummings, and Dr. Ritland all  
11 testified they understood that he was an FAA employee so no  
12 payment was necessary.

13           He was similarly evasive when questioned about FAR  
14 requirements for the contents of logbook entries for flight  
15 reviews and the amount of time that had passed since he had last  
16 completed a flight review, and his responses regarding the  
17 location of his logbook and why he had not replaced it or bothered  
18 to log his flight hours with his outside employer, and in his  
19 testimony regarding his understanding of the limitations placed on  
20 him in conjunction with his placement on administrative leave.  
21 His efforts to avoid initially or directly answering questions  
22 raises doubts about the veracity of his answers.

23           In contrast, I found Mr. Jones and Mr. Becker's  
24 testimony regarding the limitations imposed on Mr. Siwarski as a  
25 condition of his administrative leave status and his understanding

1 of those limits to be consistent and credible. So too I found  
2 Mr. Jones' testimony regarding Mr. Siwarski's employee ID card and  
3 discussions that he had with Mr. Siwarski regarding the  
4 whereabouts of his logbooks to be far more believable.

5           There were also multiple errors or inaccuracies on  
6 Respondent's employment applications, including indications of  
7 experience in the B727 that he did not have, identifying himself  
8 as a DPE when his airman records indicate otherwise, listing type  
9 ratings for aircraft which he did not possess, and documenting an  
10 almost 1,000-hour increase in total flight time over a 5-month  
11 period. These errors or inaccuracies all reflect poorly on his  
12 credibility and veracity.

13           Based on the foregoing, I find that the  
14 misrepresentations made by Mr. Siwarski in the records for  
15 Dr. Ritland, Mr. Knutsen, Mr. Hammond and Mr. Cummings indicating  
16 they had satisfactorily completed valid proficiency checks per  
17 14 CFR Section 61.58 in a Grumman Albatross were made with  
18 knowledge of their falsity.

19           Having found that the Administrator has established all  
20 the elements of intentional falsification by a preponderance of  
21 evidence, I further conclude, consistent with the discussions  
22 above, that Respondent has failed to establish the affirmative  
23 defense of mistake.

24           With respect to affirmative defenses in his second  
25 amended answer to the complaint, the Respondent also raised an

1 affirmative defense based upon the Pilot's Bill of Rights. And as  
2 I noted earlier in this proceeding, the Administrator filed a  
3 motion in limine seeking to preclude Respondent's asserted  
4 affirmative defense, which argued for dismissal based on untimely  
5 notice of the investigation against Respondent. The Administrator  
6 argued that earlier discussions with the Respondent related to an  
7 investigation regarding an employment matter and that notice  
8 regarding a separate investigation into the airman certificate  
9 matter was timely. Again, I note that the employment matter and  
10 the airman certificate action, while separate investigations and  
11 actions, do stem from related facts and circumstances beginning in  
12 February 2013.

13           The Administrator asserted that little, if any,  
14 statements or evidence gathered during the employment  
15 investigation would be offered at the hearing and that anything  
16 offered would be for limited purposes. Respondent argued that  
17 notice under the Pilot's Bill of Rights should have been provided  
18 to Respondent in February of 2013 or at a minimum in early April  
19 2013 when the employment investigation began, and that failure to  
20 provide notice at that time was per se prejudice and required  
21 dismissal.

22           I determined that there were in fact two interrelated  
23 but separate investigations, that it was unclear at that point  
24 what, if any, evidence from the employment investigation might be  
25 offered or for what purpose, and that a determination regarding

1 what relief, if any, should be granted with respect to such  
2 evidence would depend largely on matters presented at the hearing,  
3 including potentially credibility of witness testimony. Thus,  
4 prior to the hearing I denied the Administrator's motion in limine  
5 to preclude the Respondent's affirmative defense; however, I also  
6 declined to dismiss the complaint based on the matters raised in  
7 that affirmative defense. In doing so, I noted that even assuming  
8 that I were to determine earlier notice may have been warranted, I  
9 disagree that that establishes per se prejudice or requires  
10 dismissal in all cases. Again, certainly there is nothing in the  
11 language of the statute or the Board's Rules implementing the  
12 Pilot's Bill of Rights that would require dismissal. And to that  
13 point, there has been no articulation or demonstration of  
14 prejudice to the Respondent nor any argument for relief other than  
15 dismissal.

16 In closing arguments, Respondent's counsel again argued  
17 for dismissal on the same grounds, asserting that Respondent  
18 should have been provided notice required under the Pilot's Bill  
19 of Rights on or about 14 February of 2013, when his frontline  
20 manager first received some information that Respondent may have  
21 been conducting proficiency checks, or at a minimum, on April 3,  
22 2013 during a Weingarten interview, and that failure to provide  
23 such notice dictates in favor of dismissal. He has not argued for  
24 any other particular relief nor sought to exclude evidence related  
25 to the asserted lack of notice.

1           First, let me note that there is no requirement under  
2 the Pilot's Bill of Rights to provide immediate notice to an  
3 individual as soon as any information is received regarding a  
4 potential regulatory violation, as is essentially suggested by  
5 Respondent here. What the Pilot's Bill of Rights requires is  
6 timely written notice to an individual who is the subject of an  
7 investigation related to a certificate enforcement action. The  
8 elements of that notice are spelled out specifically in the  
9 statute. But since there is no argument that notice was deficient  
10 other than being untimely, I won't discuss those specific elements  
11 further. The Pilot's Bill of Rights does not define what  
12 constitutes timely notification nor does it dictate any particular  
13 relief for a violation of the notice requirement.

14           In the case at hand, the evidence shows that on or about  
15 February 14, 2013, Respondent's frontline manager received some  
16 information about the Respondent possibly conducting proficiency  
17 checks; however, Respondent denied that had occurred. It was much  
18 later, in late March of 2013, that more information was received  
19 regarding specific airmen. The evidence establishes that the  
20 Administrator moved with diligence from that point, both on the  
21 potential employment and airman certificate actions.

22           In early April of 2013, there was a Weingarten meeting  
23 conducted regarding the potential that Respondent performed  
24 official duties while on administrative leave and may have been  
25 out of the area and unavailable to report for duty without first

1 requesting leave in violation of the conditions of his  
2 administrative leave status. Shortly thereafter, an investigating  
3 officer from a different district was appointed to investigate  
4 potential violations related to the Respondent's airman  
5 certificate. Approximately one week after that appointment the  
6 investigator met with management officials to gather initial  
7 information regarding the investigation. On May 8, 2013, the  
8 investigator opened an enforcement investigative report after  
9 determining there may be enough information to conclude that a  
10 violation occurred. Two days later, on May 10, 2013, a letter of  
11 investigation was sent to the Respondent, which included the  
12 required Pilot's Bill of Rights notice.

13           Based on that, I conclude the evidence establishes that  
14 after a preliminary assessment regarding a potential violation, an  
15 enforcement investigative report was opened and notice was sent to  
16 Respondent almost immediately.

17           Based on the foregoing, I conclude there was no  
18 violation of the Pilot's Bill of Rights since the notice required  
19 under the Pilot's Bill of Rights was provided in a timely fashion.  
20 Even had I determined that notice required under the Pilot's Bill  
21 of Rights was not timely, there is no evidence of any detriment or  
22 prejudice to the Respondent. For instance, there's no evidence of  
23 loss or destruction of evidence, no evidence introduced of any  
24 statement made by Respondent during the employment investigation  
25 nor a request to exclude such evidence, no evidence of any

1 detrimental impact on his ability to be informed of or defend  
2 against the allegations against him, nor has Respondent  
3 specifically requested or articulated a basis for any alternative  
4 relief. He, again, essentially argues per se prejudice as a basis  
5 for dismissal.

6           Based on the above, I conclude there is no basis for  
7 granting dismissal of the complaint or for other relief under the  
8 Respondent's asserted affirmative defense based on the Pilot's  
9 Bill of Rights.

10           Based on all of the foregoing, I find that the  
11 Administrator has proven all of the allegations in the  
12 Administrator's complaint by a preponderance of reliable,  
13 probative and credible evidence.

14           Based upon those findings, I conclude that the  
15 Respondent, Glen D. Siwarski, violated Section 61.59(a)(2) of the  
16 Federal Aviation Regulations in that he made intentionally false  
17 entries in a logbook, record or report required to be made, kept  
18 or used to show compliance with a requirement for the issuance or  
19 exercise of the privilege of a certificate rating or authorization  
20 under Part 61 of the Federal Aviation Regulations.

21           Further, I find that by reason of the intentionally  
22 false records made by the Respondent, he demonstrated that he  
23 lacks the good moral character required of an airline transport  
24 pilot certificate holder under 14 CFR 61.153(c).

25           Having found that the Administrator has proven all

1 allegations in the Administrator's complaint by a preponderance of  
2 the reliable, probative and credible evidence, I now turn to the  
3 sanction imposed by the Administrator in this case.

4           On August 3, 2012, Public Law 112-153, known as the  
5 Pilot's Bill of Rights, was signed into law by the President. The  
6 law became effective immediately upon its enactment. The Pilot's  
7 Bill of Rights strikes from 49 United States Code, Section 44709  
8 and 44710 language that in cases involving amendments,  
9 modifications, suspensions or revocation of airman certificates,  
10 the Board is bound by all validly adopted interpretations of laws  
11 and regulations the Administrator carries out and of written  
12 Agency policy guidance available to the public relating to  
13 sanctions to be imposed under this section, unless the Board finds  
14 an interpretation is arbitrary, capricious or otherwise not  
15 according to the law.

16           Now while I am no longer bound to give deference to the  
17 Federal Aviation Administration by statute, the Agency is entitled  
18 to the judicial deference due all other federal agencies under the  
19 Supreme Court decision in Martin v. Occupational Safety and Health  
20 Review Commission. In applying the principle of judicial  
21 deference to the interpretations of laws, regulations and policies  
22 that the Administrator carries out, I must analyze and weigh the  
23 facts and circumstances in each case to determine if the sanction  
24 selected by the Administrator is appropriate.

25           In the case before me, the Administrator's complaint

1 alleges that even one intentional falsification demonstrates a  
2 lack of qualifications to hold any airman certificate and that  
3 revocation is therefore appropriate. The Administrator also  
4 presented sanction guidance documents as well as the testimony of  
5 Mr. Schuchbauer, who testified concerning a number of potentially  
6 aggravating factors associated with the allegations, including the  
7 fact that the allegations involve multiple offenses and multiple  
8 airmen, the deliberate nature of the offenses, the Respondent's  
9 status as an aviation safety inspector, for which he was in a  
10 special position of trust and held to a higher standard, and the  
11 Respondent's experience as a pilot and ATP certificate holder.  
12 Respondent has argued that no intentional falsification occurred  
13 and, thus, no sanction is appropriate. Respondent suggested that  
14 should a determination be made that a violation occurred,  
15 suspension would be a more appropriate sanction in this matter.

16 Board precedent firmly establishes that even one  
17 intentional falsification compels a conclusion that the falsifier  
18 lacks the necessary care, judgment and responsibility required to  
19 hold any airman certificate. That precedent stems from the case  
20 of Administrator v. Barry, NTSB Order EA-2689, and that case was  
21 decided in 1988. Since 1988, the Board has found and continues to  
22 find that even one intentional falsification compels the  
23 conclusion that the falsifier lacks the necessary care, judgment  
24 and responsibility required to hold any airman certificate.

25 Based on that precedent alone, I find that the sanction

1 sought by the Administrator is warranted and appropriate.  
2 However, in addition to the noted precedent, I also recognize  
3 aggravating factors identified by the Administrator, making  
4 particular note of the position of trust in the Respondent as an  
5 ASI and his failure to live up to the standards he was charged  
6 with upholding.

7 I, therefore, find that the sanction sought by the  
8 Administrator is appropriate and warranted in the public interest  
9 in air commerce and air safety. Therefore, I find that the  
10 emergency order, the complaint herein, must be and shall be  
11 affirmed as issued.

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ORDER

IT IS HEREBY ORDERED that the Emergency Order of Revocation, the Complaint herein, be, and is hereby, affirmed as issued; that Respondent's Airline Transport Pilot Certificate, Flight Instructor Certificate, and any other airman certificate held by him be, and hereby is, revoked.

Entered this 24th day of January 2014 in Phoenix, Arizona.

EDITED ON  
FEBRUARY 12, 2014

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STEPHEN R. WOODY  
Administrative Law Judge

1 APPEAL

2 ADMINISTRATIVE LAW JUDGE WOODY: That concludes my  
3 decision in this matter. Mr. Siwarski, I need to advise you of  
4 your appeal rights. You have the right to appeal my decision. I  
5 have here written Notice of Appeal Rights that I'll present to you  
6 for your reference.

7 Counsel, I would ask you to come forward. I'm going to  
8 hand you two copies, one for you and for him, and a third copy, if  
9 you wouldn't mind handing to the Administrator's counsel.

10 Do you -- Mr. Lamonaca, would you like for me to go  
11 through these appeal rights orally or do you intend to advise your  
12 client regarding the appeal rights?

13 MR. LAMONACA: Your Honor, I will advise him. Thank  
14 you.

15 ADMINISTRATIVE LAW JUDGE WOODY: All right, thank you  
16 very much. I appreciate that.

17 The one thing I will emphasize to you, Mr. Siwarski, is  
18 the timelines. I know your counsel is well aware of this, but the  
19 timelines are fairly hard and fast for filing the notice of the  
20 appeal and perfecting that appeal, so please keep those in mind.  
21 They are listed here. I won't go through them with you. I'm sure  
22 he will. But please keep those in mind so that you don't miss any  
23 deadlines for filing if you decide that you would like to appeal  
24 my decision.

25 All right. Counsel, is there anything of an

1 administrative nature that we should discuss before we terminate  
2 the proceeding?

3 MR. BYRNE: On behalf of the Administrator, no,  
4 Your Honor.

5 MR. LAMONACA: Nothing, Your Honor.

6 ADMINISTRATIVE LAW JUDGE WOODY: All right. I thank you  
7 all for your time and attention the past couple of days. And at  
8 this point we will terminate the proceeding. Thank you very much.

9 (Whereupon, at 10:07 a.m., the hearing in the above-  
10 entitled matter was adjourned.)

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CERTIFICATE

This is to certify that the attached proceeding before the

NATIONAL TRANSPORTATION SAFETY BOARD

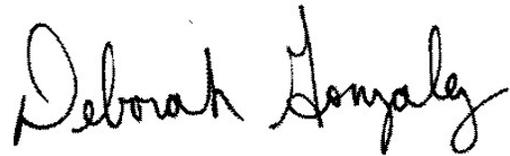
IN THE MATTER OF: Glen David Siwarski

DOCKET NUMBER: SE-19535

PLACE: Phoenix, Arizona

DATE: January 24, 2014

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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Deborah Gonzalez  
Official Reporter