

SERVED: October 28, 2008

NTSB Order No. EA-5414

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 28th day of October, 2008

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ROBERT A. STURGELL,)	
Acting Administrator,)	
Federal Aviation Administration,)	
)	
	Complainant,)	
)	Docket SE-18350
	v.)	
)	
SCOTT K. JOHNSTON,)	
)	
	Respondent.)	
)	
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OPINION AND ORDER

Respondent has appealed from the oral initial decision and order of Administrative Law Judge Patrick G. Geraghty, issued on October 6, 2008.¹ The law judge denied respondent's appeal of the Administrator's emergency revocation order, which the

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

Administrator based on violations of 14 C.F.R. §§ 61.15(d) and (e),² and 67.403(a)(1).³ We deny respondent's appeal.

On August 25, 2008, the Administrator issued an emergency order revoking respondent's commercial pilot and first-class medical certificates.⁴ In the order, the Administrator alleged that respondent violated 14 C.F.R. § 61.15(e) because respondent did not report to the FAA within 60 days the fact that the State of Colorado had revoked his driver's license, and the fact that the State of Washington had suspended his driver's license.⁵

² Title 14 C.F.R. § 61.15(d) provides that a motor vehicle action occurring within 3 years of a previous motor vehicle action is grounds for suspension or revocation of any certificate, rating, or authorization. Section 61.15(e) provides as follows:

(e) Each person holding a certificate issued under this part shall provide a written report of each motor vehicle action to the FAA, Civil Aviation Security Division (AMC-700), P.O. Box 25810, Oklahoma City, OK 73125, not later than 60 days after the motor vehicle action.

³ Title 14 C.F.R. § 67.403(a)(1) prohibits any person from making "[a] fraudulent or intentionally false statement on any application for a medical certificate."

⁴ This case proceeds pursuant to the Administrator's authority to issue immediately effective orders under 49 U.S.C. §§ 44709(e) and 46105(c), and in accordance with the Board's Rules of Practice governing emergency proceedings, codified at 49 C.F.R. §§ 821.52 - 821.57.

⁵ At the hearing, counsel for respondent and the Administrator stipulated that respondent had reported the suspension of his driver's license in the State of Washington; therefore, the Administrator's case proceeded on the basis that respondent violated the regulations charged with regard to his alleged failure to report the State of Colorado's revocation of his driver's license.

Specifically, the Administrator's order alleged that, on or about July 19, 2006, the Motor Vehicle Division of the Department of Revenue in the State of Colorado revoked respondent's driver's license "incident to an alcohol related Chemical Test Results offense." Compl. at ¶ 2. The order further alleged that respondent applied for a first-class medical certificate, which the Administrator issued, on May 24, 2007, and that respondent answered "no" to question 18v on the application, which requests that applicants report any "conviction(s) or administrative action(s) involving an offense(s) which resulted in the denial, suspension, cancellation, or revocation of driving privileges." Id. at ¶¶ 6-7. Based on these allegations, the Administrator's order alleged that respondent violated 14 C.F.R. § 61.15(e) by not reporting the motor vehicle actions, and 14 C.F.R. § 67.403(a)(1) by making a fraudulent or intentionally false statement on his application.

Subsequent to the Administrator's issuance of the emergency revocation order, the Administrator filed a motion for summary judgment, in accordance with the Board's Rules of Practice. 49 C.F.R. § 821.17(d). In this motion, the Administrator asserted that no factual issues existed for resolution, because the record of Colorado's revocation of respondent's driver's license, combined with a copy of respondent's May 24, 2007

medical application, proved that respondent did not report the revocation of his license, in violation of 14 C.F.R. § 61.15(e). The Administrator sought, at a minimum, partial summary judgment regarding the § 61.15(e) charge, and acknowledged that the § 67.403(a)(1) charge may not be appropriate for disposition via summary judgment, given that it would require a finding concerning respondent's intent at the time he completed his application. Respondent opposed the Administrator's motion. The law judge granted the motion for partial summary judgment on the basis that the evidence established that respondent violated 14 C.F.R. § 61.15(e). Pursuant to this order, the law judge limited the hearing to the issue of whether respondent had knowledge of or intent to deceive based upon the incorrect statement on his medical application.

The law judge began the hearing by stating that, pursuant to his order granting partial summary judgment, the only allegation from the Administrator's order that remained in dispute was the allegation concerning whether respondent intentionally falsified his answer to question 18v on the medical application. Prior to the commencement of the hearing, the law judge also addressed respondent's motion to dismiss, which respondent had submitted based on the fact that the law judge scheduled the hearing to occur more than 30 days after the

Administrator's issuance of the emergency order.⁶ Respondent alleged that this scheduling violated 49 C.F.R. § 821.56(a), which provides that, "[t]he hearing shall be set for a date no later than 30 days after the date on which the respondent's appeal was received and docketed." The law judge denied respondent's motion based on § 821.56(a), and concluded that this rule is an internal, procedural requirement intended to benefit the Office of General Counsel at the Board, rather than for the benefit of parties. Tr. at 9.

At the hearing, the Administrator provided the testimony of Special Agent Brenda L. Smith, who investigated respondent's failure to report the driver's license revocation to the FAA. Tr. at 12. Ms. Smith testified that she obtained a certified copy of respondent's driving history from the State of Colorado, and that this record shows that respondent was arrested in June 2006. Tr. at 12-14; Exh. A-1. Ms. Smith testified that the evidence showed that the State of Colorado had taken action against respondent's driver's license, effective July 19, 2006, and that respondent should have reported this to the FAA. Tr. at 14. The Administrator also introduced a certified copy of respondent's medical file and respondent's response to the

⁶ The Board received respondent's request for a hearing on September 2, 2008, and the law judge held the hearing on October 6, 2008. As such, approximately 34 days elapsed between respondent's request for a hearing and the commencement of the hearing.

Administrator's letter of investigation, in which respondent contended that he was unaware of the suspension. Tr. at 15, 17-18; Exhs. A-3, A-4. Ms. Smith also obtained records concerning respondent's arrest from the Aurora, Colorado Police Department, which indicated that respondent's car was impounded upon his arrest, and that respondent had signed a summons agreeing to appear in court on August 3, 2006, but that respondent did not attend the hearing. Tr. at 20-22. Ms. Smith opined that, based on the evidence in this record, respondent had falsified his medical application, and lacked the qualifications to hold a medical certificate. Tr. at 23.

On cross-examination of Ms. Smith, respondent's counsel introduced a copy of a letter from the National Highway Traffic Safety Administration indicating that the National Driver's Registry (NDR) did not show that a motor vehicle action existed against respondent in Colorado. Tr. at 25; Exh. R-1. Ms. Smith stated that she did not research the NDR in investigating this case, but instead relied on records she received directly from the States of Washington and Colorado. Tr. at 29. Ms. Smith also confirmed that the records from the State of Colorado concerning respondent do not have "conviction" marked, but indicate that an outstanding judgment against respondent exists. Tr. at 31.

In response to the Administrator's case, respondent testified that he recalled his arrest, and that he left Colorado within 2 or 3 days following the arrest. Tr. at 35-36. Respondent also testified that he did not receive any correspondence from the State of Colorado after he moved, with the exception of tax documents. Tr. at 36. Respondent testified that he took it upon himself to research the NDR to determine the status of his arrest. Tr. at 36-37. Respondent stated that he assumed that an outstanding warrant for his arrest existed, because he was scheduled to appear in court, and that, once he confirmed this, he notified the FAA in June 2008. Tr. at 37. Respondent acknowledged that he was late in notifying the FAA. Id. Respondent testified that he did not intend to deceive the FAA, and stated that the fact that he eventually notified the FAA was evidence of his lack of intent to deceive. Tr. at 38.

At the conclusion of the hearing, the law judge issued an oral initial decision, in which he determined that respondent had intentionally submitted a false answer to question 18v on his medical application. Initial Decision at 59. The law judge determined that respondent's introduction of the record referencing the NDR into evidence was irrelevant to the issue of whether respondent intentionally falsified question 18v on the medical application, because respondent was arrested in

Colorado, and his car was impounded, but respondent left Colorado shortly after the arrest. Id. at 56-58. The law judge concluded respondent's rapid departure from Colorado spoke to his intent, and that respondent's purported ignorance of the action and failure to follow through regarding his arrest in Colorado was not a valid defense to the Administrator's charge that respondent intentionally falsified his medical application. Id. at 58-59.

Respondent now appeals the law judge's order, but does not challenge the merits of the law judge's decision. Instead, respondent's appeal rests on the procedural argument that the law judge should have dismissed this case in accordance with respondent's motion to dismiss before the commencement of the hearing, because the law judge had violated 49 C.F.R. § 821.56(a) by not scheduling the hearing to occur within 30 days of the issuance of the order. Respondent cites Gallagher v. Nat'l Transp. Safety Bd., 953 F.2d 1214 (10th Cir. 1992), in support of his appeal, and refers to the regulatory history of § 821.56(a) in the Federal Register. Respondent compares the provision in § 821.56(a) to the stale complaint provision in the Board's rules of practice, codified at § 821.33,⁷ and to cases

⁷ Section 821.33 provides that, where the Administrator's complaint states allegations of offenses that occurred more than 6 months prior to the Administrator's notice of the proposed certificate action under 49 U.S.C. § 44709(c), the respondent

under the Equal Access to Justice Act (EAJA) in which the Board held that the 30-day deadline is jurisdictional. Respondent states that the Board did not show good cause for its failure to schedule the hearing within 30 days, and that the Board has consistently held that briefs that parties submit that are untimely must be dismissed in the absence of a showing of good cause. Respondent also contends that the Board's failure to schedule the case for hearing amounts to a due process violation.⁸ The Administrator disputes each of respondent's arguments, and urges us to uphold the law judge's decision.

We have reviewed respondent's appeal and the Gallagher decision in the context of this case. We find that respondent's reliance on Gallagher is misplaced, as the Gallagher court determined that the Board's issuance of a decision on an emergency order, which was 14 days past the 60-day deadline imposed by 49 U.S.C. § 1429(a), did not render the Board without jurisdiction to issue a decision on the case. In particular, the Tenth Circuit stated that, "even when significant private interests are threatened by the government's failure to comply with statutorily prescribed time requirements, the [Supreme

(..continued)

may move to dismiss the complaint as stale, in certain cases.

⁸ U.S. Const. Amend. V (stating, "No person shall ... be deprived of life, liberty, or property, without due process of law").

Court] has refused to conclude that the government loses its authority to ultimately perform its function." Gallagher, supra, at 1223 (citing United States v. Montalvo-Murillo, 495 U.S. 711, 718 (1990)). In Gallagher, the Tenth Circuit further concluded that, "[t]he sixty-day period [for emergency cases] appears to be a limit not on NTSB jurisdiction, but on the duration of the FAA's emergency designation." Id. at 1224. As such, we reject respondent's argument that the Board's failure to comply with its own policy of scheduling hearings within 30 days is a jurisdictional issue.⁹

Furthermore, respondent's appeal does not recognize that the facts of Gallagher are significantly different from the facts of the case at hand. In Gallagher, the Board exceeded the 60-day deadline imposed by statute; in the case at hand, the Board exceeded its 30-day goal for scheduling a hearing imposed by the Board's own regulations. Respondent identifies no statute requiring the Board to set a hearing within 30 days of receipt of the respondent's appeal. As the law judge noted, the Board's 30-day deadline is a self-imposed deadline designed to set forth the internal procedures for handling emergency orders.

⁹ With regard to respondent's arguments concerning cases involving EAJA, we note that the cases that respondent cites involve statutory requirements with which parties must comply, rather than regulatory requirements that the Board seeks to impose on itself. Similarly, respondent's reference to the Board's stale complaint rule is not helpful, as it also addresses deadlines imposed on parties.

Under the Administrative Procedure Act (APA), 5 U.S.C. § 552, agencies may impose requirements on themselves to achieve certain objectives.¹⁰ Anyone who seeks to challenge an agency's enforcement of its own regulation may do so in limited circumstances under the APA. See 5 U.S.C. § 702 (stating that, "[a] person suffering legal wrong because of agency action, or adversely affected or aggrieved by agency action within the meaning of a relevant statute, is entitled to judicial review thereof"). Overall, respondent's apparent assertion that his remedy lies in the Board's dismissal of the Administrator's complaint is without a statutory basis.

In addition, respondent's arguments that the Board must show good cause for its failure to schedule the hearing within 30 days and that the scheduling resulted in a due process violation are also unpersuasive. Respondent cites no authority for his argument that the Board must establish that good cause existed for its delay. In addition, we have long held that,

¹⁰ The Supreme Court has long recognized that agencies may bind themselves with procedural rules, especially in the context of promulgating agency regulations. For example, in Vermont Yankee Nuclear Power Corp. v. Natural Resource Defense Council, Inc., 435 U.S. 519 (1978), the Court stated, "[a]bsent constitutional constraints or extremely compelling circumstances the administrative agencies should be free to fashion their own rules of procedure and to pursue methods of inquiry capable of permitting them to discharge their multitudinous duties." Id. at 543 (quoting FCC v. Schreiber, 381 U.S. 279, 290 (1965), and FCC v. Pottsville Broadcasting Co., 309 U.S. 134, 143 (1940)).

when a respondent has had the opportunity to present and cross-examine witnesses at the administrative hearing, neither the law judge nor the Administrator has denied the respondent due process of law. See, e.g., Administrator v. Raab, NTSB Order No. EA-5300 at 8-9 (2007) (citing Administrator v. Nowak, 4 NTSB 1716 (1984); Administrator v. Logan, 3 NTSB 767, 768 (1977); Administrator v. Smith, 2 NTSB 2527, 2528 (1976)). Respondent argues that the loss of his ability to earn a living in his chosen profession is a right that the Supreme Court has recognized under the due process clause, and we do not dispute the Court's recognition of this right. Respondent, however, does not present any authority that compels us to hold that the Board's failure to schedule a hearing within 30 days results in a due process violation; respondent had counsel at the administrative hearing, and had the opportunity to present and cross-examine witnesses. Respondent has not shown that a slight delay in the Board's scheduling of the hearing caused the hearing to be meaningless or otherwise caused respondent harm.

In sum, respondent has not established that the law judge's minor delay in scheduling a hearing renders the Administrator's complaint unenforceable.

ACCORDINGLY, IT IS ORDERED THAT:

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

3. The Administrator's emergency revocation of any airman and medical certificates held by respondent is affirmed.

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

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

* * * * *

In the matter of:	*	
	*	
ROBERT A. STURGELL,	*	
ACTING ADMINISTRATOR,	*	
Federal Aviation Administration,	*	
	*	
Complainant,	*	
v.	*	Docket No.: SE-18350
	*	JUDGE GERAGHTY
SCOTT K. JOHNSTON,	*	
	*	
Respondent.	*	

* * * * *

U.S. Bankruptcy Court
3rd Floor Courtroom
904 W. Riverside
Spokane, Washington 99201

Monday,
October 6, 2008

The above-entitled matter came on for hearing,
pursuant to notice, at 9:00 a.m.

BEFORE: PATRICK G. GERAGHTY,
Administrative Law Judge

Free State Reporting, Inc.
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Annapolis, MD 21409
(410) 974-0947

APPEARANCES:

On behalf of the Administrator:

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On behalf of the Respondent:

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16 ORAL INITIAL DECISION

17 ADMINISTRATIVE LAW JUDGE GERAGHTY: This has been a
18 proceeding before the National Transportation Safety Board on the
19 appeal of Scott K. Johnston, herein Respondent, from an Emergency
20 Order of Revocation which seeks to revoke on an emergency basis
21 his Commercial Pilot Certificate, his First Class Airman Medical
22 Certificate, and any other Airman Certificate that may be held by
23 him issued by the Federal Aviation Administration.

24 The Emergency Order of Revocation serves herein as the
25 Complaint and was issued on behalf of the Acting Administrator,
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1 Federal Aviation Administration, herein the Complainant.

2 The matter has been heard before this Judge and as
3 required by the Board's Rules of Practice in Emergency
4 Proceedings, I am issuing a bench decision in the proceeding.

5 Pursuant to notice this matter came on for trial on
6 October 6, 2008, in Spokane, Washington. The Complainant was
7 represented by one of the Staff Counsel, James M. Webster, Esq.,
8 the Federal Aviation Aeronautical Center in Oklahoma City,
9 Oklahoma. The Respondent was present at all times and was
10 represented by his counsel Mark J. Conlin, Esq., of Spokane,
11 Washington.

12 Parties have been afforded the opportunity to offer
13 evidence, to examine or cross-examine witnesses, and to make
14 argument in support of their respective positions.

15 I have considered all the evidence, both oral and
16 documentary, and this decision will simply summarize that, which
17 supports the conclusion that I have reached herein in my view.

18 DISCUSSION

19 Normally I would have a separate paragraph dealing with
20 agreements between the parties. However, in this particular case,
21 in addition to the normal responsive pleadings, that is, the
22 Answer by the Respondent, there was also a Motion for either
23 Summary Judgment or Partial Summary Judgment, and a Decisional
24 Order Granting Partial Summary Judgment was issued on September
25 22nd, 2008.

1 So in this instance I am going to, as part of the
2 discussion, discuss the admissions first from the responsive
3 pleadings, and then also the impact of the granting of the partial
4 summary judgment that it had on the allegations contained in the
5 Complaint.

6 By pleading it was agreed that there was no dispute as
7 to the allegations contained in Paragraphs 1, 2, 4, 6, 7 and 8 of
8 the Complaint. And, therefore, those matters are clearly deemed
9 established for purposes of both the Partial Summary Judgment and
10 the Decision at this time.

11 Turning to the resolution on the pleadings for either
12 summary or partial summary judgment, the following was concluded
13 by me in the order that I issued on September 22nd, 2008:

14 I found that the allegation in Paragraph 3 of the
15 Complaint was established. And it is in this instance and in all
16 subsequent instances in this discussion in this area deeming those
17 allegations established for purposes of overall resolution of this
18 proceeding.

19 There was a stipulation with respect to the allegations
20 in Paragraph 5 of the Complaint. And with the amendment thereof
21 it is clear that the allegation in Paragraph 5 of the Complaint is
22 established on the preponderance of the evidence, and I so find.
23 And, if I did not mention, in the responsive pleadings, Paragraph
24 6 of the Complaint was also deemed established.

25 In the Order of Partial Summary Judgment it was
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1 determined that the evidence produced by the parties in their
2 respective pleadings did establish and it was so held that the
3 allegations in Paragraph 9 and Paragraph 11, with the exception of
4 the citation to Paragraph 10 of the Complaint, those allegations
5 were established.

6 Also, that the allegation in Paragraph 12 of the
7 Complaint was established. And, of course, as I've indicated all
8 of that is also established for purposes of resolution at this
9 time.

10 I further find, at this point, based upon both the
11 admissions and the responsive pleadings, the Complaint and Answer,
12 and the Order of Partial Summary Judgment, and the conclusions
13 reached therein that it is also established that as charged in the
14 Complaint that the Respondent is in regulatory violation of
15 Section 61.15(e) of the Federal Aviation Regulations, and I so
16 hold.

17 I further find that on the preponderance of the reliable
18 and probative evidence that the Respondent is in regulatory
19 violation of Section 61.15(d) of the Federal Aviation Regulations,
20 and I so hold.

21 I further conclude and find that the Respondent has
22 acted contrary to the provisions of Section 61.15(f) of the
23 Federal Aviation Regulations.

24 And lastly, based upon the admissions in the responsive
25 pleadings and the provisions of the Section, I do find that it is

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1 established on the admission and the preponderance of the evidence
2 that the Respondent has acted in regulatory violation of Section
3 67.403(c)(1) of the Regulations, and I so hold and conclude.

4 That is predicated upon the Respondent's admission in
5 his responsive pleadings that in response to Paragraph 8 of the
6 Complaint that the Respondent admitted that incident to the
7 allegations in Paragraphs 2 and 7 of the Complaint and his answer
8 to Item 18.v (Victor) on his medical application of May 24th,
9 2007, that he made a response that was incorrect.

10 The remaining issue in this case is that, framed by the
11 allegation in Paragraph 10 of the Complaint, which charges that
12 incident to the allegations of Paragraphs 2 and 7 that
13 Respondent's answer to the inquiry made on Item 18.v (Victor) on
14 that Application, which is the Application for issuance of Airman
15 Medical Certification, a First Class Airman Medical Certificate
16 made on May 24th, 2007, that his answer was either fraudulent or
17 intentionally false.

18 In this instance the charge on the evidence presented to
19 me cannot sustain fraudulent. So the issue in front of me is
20 whether or not the answer, which Respondent admits he made in
21 Paragraph 7 of the Complaint, he admits to that, having answered
22 "no" to that inquiry. Item 18.v in the negative was an
23 intentionally false response.

24 To establish intentional falsification there are three
25 elements. It must be a material inquiry. It must be false. And

1 it must be made with knowledge of its falsity, that is, the
2 intent. I'll deal with at least two of those elements summarily.

3 Clearly, any response made by any applicant on an
4 application for issuance of a certificate, whether medical or
5 airman, is a material matter because it is capable of influencing
6 the decision of the Federal Aviation Administration to either
7 issue or not issue the particular certificate. So the response
8 that the Respondent made on his application to the inquiry in Item
9 18.v was material. Was it false?

10 It is admitted by the Respondent, and I've already noted
11 in his response to Allegation 8 of the Complaint that his response
12 was incorrect. An incorrect response is not a true response.
13 It's not true if it's incorrect. If you're asked, "Are you
14 married," and you put down, "No, I'm single," and you are married
15 when you're applying for a marriage license, that's an incorrect
16 statement, and it's also a false statement. So, in my view, there
17 was a false statement made. And it's also supported then by
18 further evidence, which I will now discuss.

19 Complainant's case is made through the testimony of one
20 witness, a Ms. Brenda Smith, who is a Special Agent with the
21 Federal Aviation Administration. She's held that position for
22 about 16 years. She testified as to her conduct of the
23 investigation into this case on behalf of the Federal Aviation
24 Administration and compilation of various exhibits.

25 The first of the exhibits is Administrator's A-1, which
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1 is the Respondent's driving record from the State of Colorado.
2 And it clearly shows that on July 19, 2006, that the State of
3 Colorado issued a formal order of revocation effective July 19th,
4 2006. This was the final order of revocation being issued by
5 Department of Motor Vehicles for the State of Colorado. So there
6 is no question that an Order of Revocation was issued.

7 The Respondent offered Exhibit R-1. R-1 is a report to
8 Mr. Johnston from the National Highway Traffic Safety
9 Administration. But the significant thing in this document,
10 although it doesn't mention anything about Colorado, and it's
11 clear it doesn't mention anything about Colorado, although R-1 is
12 dated April 2, 2008, the only thing that the National Driver
13 Record had was the motor vehicle action that the Respondent had
14 incurred in the State of Washington on April 21, 2008.

15 But, in this letter from the NHTSA, they clearly state
16 that any information that they have is predicated solely upon
17 information that is furnished to them by a particular state. And
18 that it is the responsibility of the individual state to report
19 motor vehicle information to the National Driver Registry. So if
20 the State doesn't report it, it's not in the registry.

21 There's nothing here that has anything to do with
22 whether or not the State of Colorado took action. Some clerk may
23 not have sent something to the National Driver Registry. But that
24 doesn't mean that it doesn't exist. Simply that the NDR doesn't
25 have a record because the State of Colorado, for whatever reason,

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1 neglected to send that information.

2 It is clear, as a matter of fact, as I've already
3 indicated, A-1 shows that the Division of Motor Vehicles, State of
4 Colorado, issued a final Order of Revocation in July of 2006. The
5 existence of that motor vehicle action is a fact.

6 Intent is always circumstantial. One cannot go directly
7 into the mind of a particular individual, so I must look at the
8 circumstantial evidence. In this case, the Respondent testifying
9 on his own behalf testified he didn't recall whether he had ever
10 given a change of address to either the County of Aurora, the
11 Police Department in Aurora, or to the Division of Motor Vehicles
12 in the State of Colorado that he was leaving the State. On his
13 testimony, after he had been arrested in the State of Colorado for
14 driving under the influence with additional charges, he left the
15 state two or three days later. And he, in his view, did not
16 falsify his application because he didn't know that his license
17 had been revoked. Therefore he could not have formed the intent.

18 He also states that, to his view, he would not expect
19 that there would have been any final action or judgment taken with
20 respect to his licensure in the State of Colorado until he
21 appeared in court. I find that somewhat disingenuous that any
22 adult in the litigious type of society that we're in would not
23 know that if you're being sued or you're being charged by the
24 State for an offense and you don't show up that action is going to
25 be taken against you, a default judgment. You can't just ignore

1 it. So that is circumstance I have to take into account.

2 Other circumstance, however, is important to me. And I
3 bear in mind that the Respondent makes the case that if he had not
4 initiated some action with the National Highway Traffic Safety
5 Administration that this matter probably would never have come to
6 the attention of the FAA. Why he suddenly decided to make
7 inquiries, there's no evidence in front of me. It's simply that
8 he did this, and that that engendered some action on the part of
9 the FAA.

10 What caused him to essentially initiate the inquiries is
11 not shown on any of the evidence over to me. It's simply that he
12 did it, but that doesn't change the fact that there was an Order
13 of Revocation issued and that the Respondent took no action other
14 than to leave the State of Colorado and never call back to find
15 out what happened with his arrest.

16 And Exhibit C-5 is the criminal offense hard copies from
17 the County and City of Aurora, State of Colorado, the Police
18 Department. And the information in there is significant.

19 It is clear as shown on page 2 of that Exhibit that as a
20 consequence of his violations -- and he was charged with three
21 separate offenses, DUI, improper driving, careless driving,
22 failure to present evidence of insurance, and his vehicle was
23 impounded. He was also placed under arrest. And he signed the
24 custody, detention and summons form, a copy of which is given to
25 the offender under the Colorado Revised Statutes, and he signed

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1 that indicating that he promised -- and I'm quoting -- "I hereby
2 promise to appear at the time and place indicated above," which
3 was to be August 3rd, 2006, "to contest." Failure to appear will
4 result in a separate offense and will result in a warrant being
5 issued for your arrest.

6 So the Respondent on the evidence in front of me simply
7 disregarded the fact that he promised to do this and left the
8 State, and left this behind him on the assumption that nothing was
9 going to happen and the State would simply forget about it? That
10 doesn't ring true. And as I've already indicated, it clearly does
11 show that the motor vehicle was impounded, and that goes to what
12 the Respondent knew. This was not simply a traffic citation and
13 drive off. This was arrest and impounding of the vehicle.

14 But of more significance is page 8 of this Exhibit. The
15 title of this is "Custody, Detention and Summons. Express Consent
16 Affidavit and Notice of Revocation." So on this date at the time
17 he was arrested by this police officer in Aurora, he was given a
18 Notice of Revocation. And a copy of this is given to the
19 Respondent, every driver as required by the Colorado Revised
20 Statutes.

21 His license to operate a motor vehicle in the State of
22 Colorado was taken from him by the police officer. This was an
23 administrative suspension and revocation per se as a matter of law
24 under Colorado Revised Statutes. And plainly on this document it
25 states, "Order of Revocation," and it cites to the Colorado

1 Revised Statutes. And in large caps it says, "This is your
2 official order. Unless you request a hearing in writing and
3 surrender your license within seven days of this date and agree to
4 appear, this is final." That's why that order was issued, as I've
5 already referenced in Exhibit A-1.

6 So the Respondent on the date that his arrest was made
7 in June of 2006 had documents given to him which indicated that he
8 was promising to show up to contest this. That he, in my view, as
9 an adult with two years of college would have known that you
10 simply can't walk away and have nothing happen.

11 And, lastly, that you also have a document that on its
12 face tells you that is a Notice of Revocation and an Order of
13 Revocation, and a taking of his motor vehicle license by the
14 police officer. So his driver's license was suspended in place,
15 and that is an administrative action and revocation per se.

16 As I've already stated, the intent is circumstantial.
17 I've listened to the Respondent's testimony and looked at the
18 Exhibits. In my view the Respondent's action in simply leaving
19 the State of Colorado, not making any effort to communicate with
20 the Division of Motor Vehicles or the City and County of Aurora to
21 ask for an extension of time or to find out what happened. And,
22 in fact, that he already knew because he had an Administrative
23 Order of Revocation given to him on June 3, 2006. That in my view
24 the Respondent in fact knew that he had a motor vehicle action,
25 which his driving privileges in the State of Colorado have been

1 cancelled, revoked per se, and suspended pending the outcome of
2 his appearance in court, which he never made. So the order became
3 final.

4 The deliberate ignorance or failure to follow through is
5 not a valid defense. In my view of the circumstances here by a
6 preponderance of the reliable evidence does indicate to me that
7 the Respondent knew that his driver's license had been suspended.
8 It was taken away from him. That he was to appear in Court. He
9 had promised to do that. That he had been given an Order of
10 Revocation, and had a temporary driver's license issued. And,
11 therefore, when he answered "no" to the inquiry in Item 18.v --
12 Victor -- on his Medical Application of May 24th, 2007, he made a
13 false, material, intentional, misrepresentation. And therefore I
14 do find now on the evidence in front of me that the allegation in
15 Paragraph 10 of the Complaint is established by a preponderance of
16 the evidence.

17 As a consequence thereof I further hold and find that
18 the Respondent has acted in regulatory violation of Section
19 67.403(a)(1) of the Federal Aviation Regulations. In that he made
20 an intentionally false statement on an Application for issuance of
21 an Airman Medical Certificate.

22 I further find that he has acted contrary to the
23 provisions of Section 67.403(b) of the Federal Aviation
24 Regulations, which gives the authority to the Administrator for
25 revocation of any and all Airmen Certificates. And, of course,

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1 that is also provided by the allegations in 67.403(c)(1) of the
2 Regulations.

3 And to finalize this, I further find then that with
4 respect to the allegations in Paragraph 11 of the Complaint that
5 the charge in there where it states, "Incident to paragraph 6, 7,
6 8, 9, and now 10 are established by a preponderance of the
7 evidence and as provided in my Order of Partial Summary Judgment.

8 Board precedent really is that the making of a false
9 statement in records or on an application, even one instance
10 thereof, warrants the sanction of revocation, in that it shows a
11 lack of judgment and responsibility on the part of the individual.

12 Further that the Statutes require that deference be
13 shown to the Administrator's choice of sanction. In the absence
14 of any showing that the action taken by the Administrator is
15 arbitrary, capricious or not in accord with precedent, I indicated
16 the action is in accord with law and precedent, and is not shown
17 to be either arbitrary or capricious. And, therefore, I affirm
18 the Emergency Order Revocation, the Complaint herein, as issued.

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ORDER

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IT IS THEREFORE ADJUDGED AND ORDERED THAT:

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1. The Emergency Order Revocation, the Complaint
herein be, and the same, hereby is affirmed as issued.

25

2. The Respondent's Commercial Pilot Certificate, his
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1 First Class Airman Medical Certificate, and any other Airman
2 Certificate issued to him by the Federal Aviation Administration
3 be, and the same hereby is revoked on an emergency basis.

4 Entered this 6th day of October, 2008 at Spokane,
5 Washington.

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10 DATED & EDITED ON
11 OCTOBER 14, 2008

PATRICK G. GERAGHTY, JUDGE