

SERVED: January 2, 2009

NTSB Order No. EA-5424

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 30<sup>th</sup> day of December, 2008

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ROBERT A. STURGELL,		)	
Acting Administrator,		)	
Federal Aviation Administration,		)	
		)	
Complainant,		)	
		)	Docket SE-18095
v.		)	
		)	
MARIA ROSE FINAZZO,		)	
		)	
Respondent.		)	
		)	
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**ORDER DENYING RECONSIDERATION**

Respondent seeks reconsideration of our decision in this proceeding, NTSB Order No. EA-5412, served October 16, 2008. In that decision, we affirmed the Administrator's order and reversed the law judge's initial decision, finding that respondent violated 14 C.F.R. §§ 67.403(a)(1) and 61.153(c), by making false statements on several applications for a medical certificate. In particular, we determined that respondent's failure to list on her medical applications several prescription drugs, as well as several physician visits and diagnoses, rendered respondent in violation of §§ 67.403(a)(1) and 61.153(c).

In the decision below, the law judge granted respondent's appeal of the Administrator's order, and found the Administrator failed to prove that respondent "currently" used the medications that Dr. Seberg listed in his notes, that respondent's testimony that she did not include certain diagnoses on the applications because she was unaware of the diagnoses was credible, and that respondent's failure to list her visits to certain physicians was not material. The Administrator appealed the law judge's decision, and we granted the appeal, on the basis that the weight of the evidence contradicted the law judge's credibility assessments, and that the law judge erred in determining that the question concerning physician visits on the certificate application was not material. As such, we reversed the law judge's initial decision and affirmed the Administrator's order of revocation.

Respondent has now filed a "Petition for Reconsideration and Request for Oral Argument," under 49 C.F.R. § 821.50. Section 821.50(c) requires that such petitions "state briefly and specifically the matters of record alleged to have been erroneously decided, and the ground or grounds relied upon." Section 821.50 also provides for the submission of arguments based on new matter, when the petitioner sets forth the new matter in "affidavits, prospective witnesses, authenticated documents, or both, or an explanation of why such substantiation is unavailable," and directs petitioners to "explain why such new matter could not have been discovered in the exercise of due diligence prior to the date on which the evidentiary record closed." Id. § 821.50(c). Section 821.50(d) provides that the Board will not consider, and will summarily dismiss, repetitious petitions for reconsideration.

In her petition, respondent merely reargues the facts of this case, and discusses several areas in which she believes our decision was improper. Respondent states that the weight of the evidence does not support the Board's findings, and that the law judge's credibility determinations were correct. Respondent's arguments essentially arise out of our consideration of the notes from respondent's physician, Dr. George Seberg, that documented several prescriptions that Dr. Seberg prescribed to respondent, as well as diagnoses of anxiety and other conditions that respondent did not include on her medical applications. Respondent now argues that the Board's reliance on these notes was improper because the law judge afforded the notes no probative weight, and because Dr. Seberg had been convicted of practicing medical services without a license, and had been

named in several medical malpractice suits. Respondent also states that her petition is based on "new matter," in accordance with 49 C.F.R. § 821.50, which consists of "[c]ertain court and administrative records," but did not attach the documents to the petition. The Administrator opposes respondent's petition, and urges us to uphold our decision below.

We deny respondent's petition for reconsideration and reargument. First, respondent has not presented any new matter in accordance with 49 C.F.R. § 821.50(c). Respondent's references to the criminal and civil cases involving Dr. Seberg indicate that these cases span from 1989 to 2001. Respondent's argument that she did not list these cases previously in the case below is inapposite, because due diligence would require respondent to prepare to address the Administrator's presentation of Dr. Seberg's notes at the hearing, and such preparation should have included respondent's investigation into Dr. Seberg and presentation of evidence that would impeach the credibility of Dr. Seberg and his notes. Respondent acknowledges that the Administrator's discovery of these notes prompted the Administrator to bring this case; an argument that respondent was unaware that the notes or visits to and prescriptions from Dr. Seberg would be an issue defies logic.

In addition, respondent's argument that we relied solely on Dr. Seberg's notes in evaluating this case is contrary to the language of our opinion. In our opinion below, we considered not only Dr. Seberg's notes, but also the fact that respondent did not dispute that she did not report the prescription medications she took, nor did she report certain visits to Dr. Seberg, as well as other physicians, and that she did not report certain diagnoses. We also evaluated the testimony and notes of respondent's psychiatrist, Dr. Gail Ingram, which indicated that Dr. Ingram believed respondent suffered from "anxiety symptoms," and that Dr. Ingram prescribed medication to respondent to assist with sleeping. Overall, respondent's focus on Dr. Seberg's notes and professional history is misplaced and does not cause us to reverse our decision below, nor order a hearing for further argument on these issues.

**ACCORDINGLY, IT IS ORDERED THAT:**

Respondent's petition for reconsideration is denied.

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