

The Administrator's December 10, 2008 Emergency Order of Revocation, filed as the complaint in this proceeding, alleged the following:

1. You are the holder of Airline Transport Pilot certificate number 3304056.
2. On November 26, 2007, you applied for and were issued a First Class airman medical certificate...
3. In your application for that certificate in response to question 18w, history of non traffic convictions, you answered "no".
4. That declaration ... was knowingly and intentionally false.
5. On October 16, 2005², you were found guilty of violating Section 750.539j(2)(b) of the Michigan Penal Code, to wit capturing or attempting to capture the image of women in a bathroom under circumstances where those individuals had a reasonable expectation of privacy.
6. Violation of Michigan Compiled Laws section 750.539j(2)(b) is a felony carrying a penalty of up to 5 years in jail and up to a \$5000 fine.
7. You were sentenced to 30 days in jail, [a] \$2500 fine and 24 months probation.

The Order concluded that by reason of the foregoing, respondent failed to satisfy section 61.153(c) of the Federal Aviation

² The Administrator's order incorrectly stated the year as 1995, but was amended without objection at the hearing to correct the date to 2005. The Administrator's order incorrectly cited 750.239j(2)(b) in paragraph 7, but the paragraph was amended without objection at the hearing to reflect the correct citation of 750.539j(2)(b), as referenced correctly in paragraph 5.

Regulations (FARs),³ and, further, is ineligible to hold any FAA-issued certificates, including respondent's ATP certificate and first-class medical certificate, pursuant to the provisions of FAR section 67.403(a)(1).⁴

At the January 6, 2009 hearing, held in Grand Rapids, Michigan, the Administrator presented the testimony of Tyrone Chatter, Manager, FAA Internal Security and Investigations Branch. Mr. Chatter described his office's investigation and

³ FAR section 61.153, 14 C.F.R. Part 61, provides:

61.153 Eligibility requirements: General.

To be eligible for an airline transport pilot certificate, a person must:

* * * * *

(c) Be of good moral character;

* * * * *

⁴ FAR section 67.403, 14 C.F.R. Part 67, provides:

67.403 Applications, certificates, logbooks, reports, and records: Falsification, reproduction, or alteration; incorrect statements.

(a) No person may make or cause to be made—

(1) A fraudulent or intentionally false statement on any application for a medical certificate or on a request for any Authorization for Special Issuance of a Medical Certificate (Authorization) or Statement of Demonstrated Ability (SODA) under this part;

* * * * *

(b) The commission by any person of an act prohibited under paragraph (a) of this section is a basis for—

(1) Suspending or revoking all airman, ground instructor, and medical certificates and ratings held by that person;

* * * * *

review, in response to a request from the FAA's medical division, of records pertaining to a criminal conviction that had not been reported on respondent's recent medical application. Mr. Chatter sponsored numerous exhibits into evidence: the medical application respondent submitted to the FAA on November 26, 2007; the police investigation report and court records pertaining to respondent's guilty plea and felony conviction on one count of "capturing/distributing image of unclothed person [Michigan Criminal Law 750.539j(2)(b)]"⁵; and additional court records documenting that respondent was incarcerated for 30 days commencing October 24, 2005, was fined \$2,500, and served a 2-year probation that was successfully completed on October 30, 2007. On cross-examination, Mr. Chatter admitted that he did not have any personal contact with respondent, and had not further investigated respondent's moral character.

The uncontested facts pertaining to respondent's conviction are that he concealed a miniature camera in the stall of the women's restroom at Paradigm Jet Management (Paradigm), and it was discovered by one of respondent's female employees. The video camera had been remotely connected to a videotape recorder

⁵ The criminal information filed against respondent by the state alleged the following:

CAPTURING/DISTRIBUTING IMAGE OF UNCLOTHED PERSON
 did attempt to photograph, or otherwise capture or record, the visual image of the undergarments worn by [named female #1] and/or [named female #2], and/or the unclad genitalia of [named female #1] and/or [named female #2], and/or the unclad b[u]ttocks of [named female #1] and/or [named female #2], under circumstances where that individual had a reasonable expectation of privacy; contrary to MCL 750.539j(2)(b)...
 FELONY: 5 Years and/or \$5,000.00

underneath respondent's office desk, but was apparently not connected at the time the camera was discovered. Respondent explained to the police, and at the hearing, that he was infatuated with one of his employees and long-time friend (not the woman who discovered the camera) and had set up the camera to capture images of her.

The Administrator also presented the testimony of Dr. Matthew Dumstorf, FAA Deputy Regional Flight Surgeon, Great Lakes Region. Dr. Dumstorf testified regarding the procedure the FAA follows to ascertain medical qualification if an airman indicates on an application that he has a history of any convictions of the type referenced in question 18w, and the importance of the information to the FAA in making a proper evaluation of an airman's medical qualification. Dr. Dumstorf explained that if a respondent indicates a conviction history in response to question 18w, the FAA aeromedical staff would seek to evaluate the details of a conviction to assess, among other things, the airman's "psychological or psychiatric stability." Tr. at 33.

Respondent testified on his own behalf. Respondent is the owner and operator of Paradigm, an aviation enterprise that manages jet aircraft and holds a Part 135 certificate for which respondent is the Director of Operations. Respondent testified that he made a mistake in 2005, and that he has learned from his mistake. Respondent also testified, to the apparent surprise of the Administrator (because this, too, was not reported on respondent's 2007 medical application), that he was treated by a

psychologist for approximately 1 year, and offered a letter from the psychologist that confirmed successful treatment lasting until November 2006. Exh. R-2. Regarding his 2007 medical application, respondent testified that he answered "no" to question 18w because it was his "understanding that I had no convictions." He explained that, based on a conversation with his criminal lawyer at the time of his plea negotiation, he understood "that once [I] complet[ed] probation, that [my lawyer] would go back to the prosecutor's office and it would ultimately be expunged." Tr. at 59. Respondent claimed that he believed that his record had been expunged. Tr. at 60. During cross-examination, respondent admitted that after he completed his probation, on October 30, 2007, he did nothing to ascertain whether the asserted expungement had occurred before completing and submitting his medical application on November 26, 2007. Respondent also testified that he would never intentionally falsify FAA-required documents, and described his considerable experience working with FAA personnel on creating and revising FAA-approved operations manuals for Part 135 endeavors, creating documentation required for Part 135 certification, certifying flight and validation tests, and working with foreign aviation certification entities. Respondent also testified that after the FAA's order of revocation, he tried to contact the attorney who handled his criminal appeal, but learned that the attorney had retired before the end of respondent's probation and moved out of state. Respondent explained that at the time of the hearing he had been unable to contact the attorney.

Respondent also presented the testimony of one of the victims of his 2005 crime, the woman who was the object of respondent's self-described infatuation. This witness testified that she has been friends with respondent since 1989, and worked with him for a number of years, including when the camera was discovered in 2005. She no longer works for Paradigm, but sees respondent regularly, as she works next door to Paradigm. She testified that when the incident happened in 2005, it was a shock, and she initially felt "hurt," but after discussions with her husband she had "let it go." Tr. at 76-78. This witness testified that she believes that respondent is a person of good moral character. Tr. at 79.

At the conclusion of the hearing, the law judge reviewed the evidence in the record, and concluded that the Administrator "was validly premised in bringing this [revocation order], [with] substantial[,] probative[,] material and relevant evidence adduced during the course of this proceeding, [proving] virtually every allegation set forth," and affirmed revocation of all FAA-issued certificates held by respondent. Initial Decision at 109.

On appeal, respondent argues, essentially, that the law judge applied an incorrect standard in finding that respondent intentionally falsified his medical application, and that there was insufficient evidence to support the Administrator's allegation that respondent presently lacks the moral character required to hold his ATP certificate. The Administrator, in reply, urges us to uphold the law judge's decision and the revocation order.

We first address the intentional falsification issue. The required elements of proof in an intentional falsification case are: (1) a false representation; (2) in reference to a material fact; and (3) made with knowledge of falsity. See, e.g., Administrator v. Croston, NTSB Order No. EA-5265 at 2 (2007). An incorrect answer on a medical application is prima facie proof of intentional falsification. Administrator v. Manin, NTSB Order No. EA-4303 at 3 (1994). The record clearly establishes that contrary to respondent's "no" answer to question 18w, at the time he submitted his medical application he knew he had been convicted of a felony. Moreover, as testified to by Dr. Dumstorf, the information sought in response to question 18w is important to the FAA's ability to accurately determine an airman's medical fitness. It is also well-established that all answers on an FAA medical application are material. See Administrator v. Reynolds, NTSB Order No. EA-5135 at 3 (2005). Respondent argues, however, as he did before the law judge, that because he believed at the time he filled out the application that his felony conviction was expunged after he completed his court-mandated probation, he did not intentionally falsify his application.

First, we believe it clear from the law judge's decision that he made an implicit credibility finding against respondent's exculpatory claim to have not intentionally falsified his medical application. After reviewing the evidence, and paraphrasing respondent's claim that he thought his criminal conviction had been expunged, the law judge discussed the fact that respondent

had not once, but twice, omitted information from the medical application—the conviction and the visits to the psychologist that were a required condition of his 2-year probation—that would have alerted the Administrator to respondent's conviction of a crime. The law judge then concluded unequivocally that respondent's declaration on his medical application that he had no convictions was "knowingly and intentionally false." Initial Decision at 110, 112. It is well-settled that we do not disturb our law judge's credibility determinations absent a showing that they are clearly not supported by the record evidence. See, e.g., Administrator v. Smith, 5 NTSB 1560, 1563 (1986).

Respondent's appeal provides us no basis to conclude that the law judge improperly evaluated or weighed respondent's exculpatory claims or testimony. Indeed, upon our own review we find inherently incredible, particularly in light of respondent's asserted experience complying with FAA certification requirements in the Part 135 context and his professed concern about the impact of his conviction on his aviation career, respondent's testimony that he did not seek to ensure his conviction was expunged prior to completing his medical certificate application and, under the circumstances, his claim that he believed his conviction was expunged when he submitted his application.⁶

⁶ Contrary to respondent's assertions on appeal, we do not read the law judge's remark that, "[i]t's obvious that the high degree of care, judgment and responsibility [required of ATP certificate holders] was not rendered here by respondent," to indicate the law judge applied the wrong legal standard. Oral bench decisions often generate more informal articulations of a judge's reasoning, but after a careful review of the law judge's entire decision, we are satisfied that he correctly decided this case based on a proper evaluation of whether the evidence demonstrated

Moreover, we note, without deciding, that we are skeptical whether an expunged felony conviction should justify answering "no" to question 18w notwithstanding an applicant's knowledge of the underlying conviction giving rise to any expungement. Nonetheless, assuming *arguendo* that expungement could in some limited circumstances (depending on the terms and scope of the expungement or other deferred adjudication) exonerate an applicant on a charge of intentional falsification for answering "no" to question 18w, we think this would be in the nature of an affirmative defense that a respondent would have to prove. In other words, the exculpatory effect, if any, of an expungement would be through legal operation of the applicable terms of the expungement agreement to nullify culpability for an answer that would otherwise be factually, but not legally, incorrect. In the present case, the issue need not be addressed, as respondent's conviction has not been expunged.

For the foregoing reasons, either of which are independently sufficient to sustain the law judge's decision on the falsification charge, we discern no basis to disturb the law judge's finding that the Administrator proved by a preponderance of the evidence the charge that respondent intentionally falsified his medical application when he incorrectly answered that he did not have a history of non-traffic convictions.

We also discern no basis to disturb the law judge's decision to sustain the Administrator's allegation that respondent lacks

(..continued)
that respondent knowingly and intentionally falsified his medical application when he answered "no" to question 18w.

the moral character necessary to hold an ATP certificate. The term "good moral character," as used in section 61.153(c), was first discussed at length by the Civil Aeronautics Board (CAB) (the Safety Board's predecessor in adjudicating air safety proceedings) in Administrator v. Roe, 45 CAB 969 (1966). In that case, the CAB explained:

With regard to pilots, good moral character is established as a requirement only for the holders of airline transport pilot certificates. Only the holders of these certificates may act as pilots-in-command of common carrier aircraft, and it is evident that the requirement that such persons be of good moral character reflects the responsibilities and duties entrusted to them.... Section [61.153(c)] reflects the Administrator's determination that a person entrusted with these responsibilities must not merely comply with specific requirements of technical competence but also must display a firmness and stability of moral character that indicates his ability and willingness to assume such responsibilities. It is essential that he possess to a high degree an awareness of the responsibilities entrusted to him irrespective of his own desires.

45 CAB at 972. In the present case, respondent was convicted of a felony and sentenced to jail and a 2-year supervised probation. Further, when respondent had the opportunity to reveal this conviction to the FAA in answering on his medical application whether he had a "history of non-traffic convictions," he did not. We have previously affirmed the Administrator's allegations of lack of moral character when such allegations were based on felony convictions of a lascivious nature. See, e.g., Administrator v. Tucker, NTSB Order No. EA-4872 (2000) (respondent was convicted for sexual pursuit of an underage female); Administrator v. Doe, NTSB Order No. EA-3516 (1992) (proof of criminal conviction resulting in 8 years imprisonment for various

felonious sexual offenses is prima facie proof that respondent lacks the good moral character required of an ATP certificate holder).⁷ Moreover, in Tucker, supra, we noted that evaluation of assertions that an airman lacks the moral character required of ATP certificate holders is significantly facilitated by reference to the "moral guidance that written prohibitions in a criminal code can typically supply, given the societal judgments about right and wrong that our criminal laws can reasonably be said to incorporate." Tucker at n.6. In this matter, respondent was convicted of a crime that the law judge correctly observed is outside the norms of accepted behavior, and, indeed, the State of Michigan deemed respondent's transgression to be significant enough that respondent was sentenced to 30 days in jail, ordered to pay a fine of \$2,500, and ordered to serve an additional 2 years on supervised probation.⁸ We have also previously noted

⁷ We note that although respondent's conduct underlying his 2005 conviction does not match the depravity exhibited in the Tucker and Doe cases, his actions nonetheless represent a "complete disregard for the rights of other human beings" and were a significant departure from "ordinary patterns of morality." Roe, supra; Administrator v. Saunders, NTSB Order No. EA-3672 (1992). Moreover, respondent's crime was more significant than other acts or misdemeanors we have previously found insufficient to prove allegations of a lack of good moral character. Compare Saunders, supra (a misdemeanor for indecent exposure that resulted in no incarceration, and which does not demonstrate "complete disregard for the rights of other human beings," is insufficient, standing alone, to support an allegation of a lack of good moral character); Administrator v. Johnson, 5 NTSB 279, 282-283 (1985) (conviction for "simple battery" and "simple sodomy" found to be insufficient to prove lack of good moral character, where state law designated simple battery as merely a misdemeanor and the misdemeanor sodomy charge reflected consensual sexual activity).

⁸ We note that although the purported target of respondent's crime summarily testified that respondent is presently a man of good moral character, this witness was not the only person subjected to respondent's criminal activity (another woman

our "view that charges of intentional falsification, representing the making of a false statement with the intent to deceive an agency of the Federal Government regarding an essential safety matter, generally will support a finding of lack of the 'good moral character' required by FAR section [61.153(c)]."

Administrator v. Cranford, 5 NTSB 343, 348 (1985). As to this latter issue, we think it was entirely appropriate that the law judge considered both the charged falsification of respondent's answer to question 18w, as well as the fact, which became obvious at the hearing during respondent's testimony, that respondent had also not disclosed his visits to the psychologist on his medical application. Accordingly, we discern no basis to disturb the law judge's finding that the Administrator has carried the burden of proving that respondent lacks the requisite moral character to hold an ATP certificate.

It is well-settled, and respondent does not argue otherwise, that revocation is the appropriate sanction for the charges alleged in the Administrator's complaint. A single falsification of a medical application is independent and sufficient grounds for revocation of *all* FAA-issued certificates. See, e.g., Administrator v. Culliton, NTSB Order No. EA-5178 (2005).

Revocation of an ATP certificate is appropriate where it has been

(..continued)
discovered the camera while using the restroom). The record supports the Administrator's judgment that respondent lacks the good moral character required of ATP certificate holders.

demonstrated that an ATP certificate holder does not possess the requisite good moral character. Tucker, supra.⁹

ACCORDINGLY, IT IS ORDERED THAT:

1. Respondent's appeal is denied;
2. The law judge's initial decision is affirmed; and
3. The Administrator's emergency revocation of respondent's airline transport pilot and first-class airman medical certificates, and any other medical certificates held by respondent, is affirmed.

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

⁹ The Administrator has lodged disagreement with the law judge's Order Granting Respondent's Petition Challenging the Administrator's Emergency Determination in this matter. The law judge granted respondent's motion after determining that, "the single falsification alleged herein [does not] relate[] to respondent's medical qualifications" and that respondent's criminal conduct, "while ... clearly reprehensible ... do[es] not pose an immediate threat to safety in air transportation." The effect of the law judge's ruling was to stay the effectiveness of the Administrator's revocation order pending final resolution of this matter by the Board. Under our rules, "[t]he law judge's ruling on the petition [for review of the Administrator's determination that an emergency affecting aviation safety exists] shall be final, and is not appealable to the Board." 49 C.F.R. 821.54(f). Given that we have affirmed the Administrator's revocation order on the merits in this matter, we decline to exercise our discretion to comment on the law judge's ruling on the petition except to note that, in his analysis, the law judge appears to have overlooked the broader aviation safety perspective that respondent's concealment of relevant conviction information prevented any meaningful aeromedical assessment by the Administrator of respondent's then-present psychological and general medical fitness for safe flight.

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. *
JEFFREY D. SPYKE, *
*
Respondent. *
* * * * *

Docket No.: SE-18451
JUDGE FOWLER

One Division Avenue, North
Grand Rapids, Michigan

Tuesday
January 6, 2009

The above-entitled matter came on for hearing,
pursuant to notice at 11:00 a.m.

BEFORE: WILLIAM E. FOWLER, JR.
Chief Administrative Law Judge

APPEARANCES:

On behalf of the Administrator:

GLENN L. BROWN
Federal Aviation Administration
2300 E. Devon Avenue
Des Plaines, Illinois 60018
(847) 294-7313

On behalf of the Respondent:

PETER R. TOLLEY (P21492)
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Suite 200
Grand Rapids, Michigan 49525
(616) 726-2211

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ORAL INITIAL DECISION AND ORDER

ADMINISTRATIVE LAW JUDGE FOWLER: On the record. Our reporter will caption this, Oral Initial Decision and Order.

This has been a proceeding before the National Transportation Safety Board held pursuant to the provisions of the Federal Aviation Act of 1958, as that act was subsequently amended and the Board's Practice in Air Safety Proceedings on the appeal of Jeffrey D. Spyke from an Emergency Order of Revocation dated December 10th, 2008, which seeks to revoke Respondent Spyke's airline pilot transport certificate, Respondent Spyke's first-class airman medical certificate and the order states any other airman medical certificate held by Respondent Spyke.

The Administrator's Emergency Order of Revocation, as provided by the National Transportation Safety Board's Rules of Practice, serves herein as the complaint in this proceeding and was issued by the Regional Counsel, Great Lakes Region of the Federal Aviation Administration.

This proceeding has been heard before this United States Administrative Law Judge and, as is provided by the Board's Rules of Practice pertaining to emergency proceedings, it is mandatory, as the judge in this proceeding, that I issue an oral initial decision following the conclusion of this proceeding. Following notice to the

1 parties this matter came on for trial on January 6, 2009, in Grand
2 Rapids, Michigan. The Respondent, Jeffrey D. Spyke, was present at
3 all times and was very ably represented by Peter R. Tolley, Esquire.
4 The Complainant in this proceeding was also very ably represented by
5 Glenn L. Brown, Esquire, of the Regional Counsel's Office, Great Lakes
6 Region of the Federal Aviation Administration.

7 Both parties have been afforded the opportunity to call,
8 examine, and cross-examine witnesses and to offer evidence. In
9 addition, the parties were afforded the opportunity to make final
10 argument in support of their respective positions. I have reviewed
11 the testimony and the documentary exhibits that we've had adduced
12 before us during the course of this proceeding today. The
13 Administrator has had 11 exhibits, Respondent has had 2.

14 Both the Administrator and the Respondent have had 2
15 witnesses testify on behalf of their respective cases. This is a very
16 interesting case to me because, as you heard me state earlier, the facts
17 here are different from what we usually have in a falsification case.
18 We've had the testimony of the two witnesses that the Administrator
19 set forth.

20 First witness, Tyrone William Chatter, who is manager of
21 internal security for the FAA located in Chicago. He gave us to review
22 and it was Administrator's Exhibits A-1, A-2 and A-3, A-4, A-5 and A-6,
23 all through Mr. Chatter, were admitted in evidence, which indicated
24 the felony conviction of Respondent Spyke, and the sentence of two
25 years, -- two years imprisonment, \$2500 fine and two years probation.

1 The second witness on behalf of the Administrator was
2 Dr. Matthew Dunstorf, who is deputy regional flight surgeon for the
3 FAA in the Great Lakes Region here, and has had extensive experience
4 dealing with similar types of cases, as we have here.

5 He was a Chief Medical Officer for American Airlines for a
6 number of years, is a very experienced medical doctor and, based on
7 his experience an aviation executive. The Respondent testified
8 himself. Respondent is owner of the Paradigm Company, which manages
9 aircraft. He has had extensive managerial experience and has been an
10 airline transport rated pilot for the last 3 years.

11 The second witness on behalf of the Respondent was
12 Mrs. Linda Seymour, who is very experienced as a flight attendant and
13 who testified very graphically regarding the incident that brought
14 about and caused the conviction of Respondent Spyke.

15 Ladies and gentlemen, we are here today basically, by reason
16 of a letter, I think it was A-1, signed by Dr. Dumstorf on behalf of
17 Nestor B. Kowalsky, regional flight surgeon. The first paragraph of
18 this letter tells us why we're all here today and having this hearing.

19 "Dear Mr. Spyke, after review of your airman medical
20 certification file information received, regarding a felony
21 conviction, which occurred in October 2005, it was noted you did not
22 declare the conviction on the airman medical application FAA form
23 8500-8 dated November 26, 2007."

24 I have reviewed the totality of the testimony and the
25 evidence, coupled with the documentary exhibits in the record of this

1 proceeding. It is my determination and conclusion that the
2 Administrator of the Federal Aviation Administration, was validly
3 premised in bringing this Emergency Order of Revocation, with
4 substantial, probative, material and relevant evidence adduced during
5 the course of this proceeding, Administrator has proven virtually
6 every allegation set forth in the Emergency Order of Revocation.

7 In fact, as was ably stated by counsel for the Administrator,
8 an additional fact was brought out regarding the falsity here, which
9 dealt with the health treatment that the Respondent had undergone,
10 extensively, during and immediately after his felony conviction.

11 (Off the record interruption)

12 JUDGE FOWLER: What we have here, ladies and gentlemen, by
13 an airline transport rated pilot who is always held to the highest
14 degree of care, judgment and responsibility.

15 (Off the record interruption)

16 JUDGE FOWLER: As I was saying, an airline transport rated
17 pilot has to at all times, in order to keep, maintain and be eligible
18 to have that certificate must have the highest degree of care, judgment
19 and responsibility. Here we have a felony conviction, which I started
20 off reading, which was the cause of this case being an emergency
21 proceeding. Also we have an issue of moral character and moral
22 responsibility.

23 The falsification charges the Administrator has proven by
24 probative, relevant, material and substantial evidence, as to the
25 falsity, Respondent has had a felony conviction within two to three

1 years following the Respondent's application of November 26, 2007 and
2 answered the question 18w, dealing with the history of non-traffic
3 convictions, answering that "no," subsequently, stating "he thought
4 it had been expunged."

5 But there's no evidence in the record of this proceeding that
6 he had ever made a request or an attempt to find out whether in fact
7 the record had been expunged completely as he stated, negating and
8 nullifying his conviction. It's obvious that the high degree of care,
9 judgment and responsibility was not rendered here by the Respondent.
10 This record of conviction is a very material and relevant issue that
11 the FAA depends upon to know what they have to know and who they're
12 dealing with where airman are concerned that are certified by the FAA,
13 this is material, relevant, and probative.

14 And also in this same application of November 26, 2007, no
15 mention was made of the health treatment that he had been having at
16 this time, which would constitute another falsification. In addition
17 to that, as was stated in the opening of this proceeding, the second
18 prong of this case deals with "Does the Respondent have good moral
19 character," which every airline transport pilot must possess to be
20 eligible to hold that type of certificate.

21 I cannot disagree with the statement and classification of
22 counsel for the Administrator when he stated during the final argument
23 that what we have here involving this camera being placed in the ladies
24 restroom, are actions outside the norms of accepted behavior. So that
25 I cannot and will not reject the Administrator's allegations that at

1 the time of this proceeding, and thereafter, the Respondent lacks the
2 good moral character necessary for a holder of an airline transport
3 pilot certificate.

4 It is my determination that the Administrator was validly
5 premised in all 8 pertinent and salient paragraphs that constitutes
6 the Administrator's Emergency Order of Revocation issued on December
7 10th, 2008. Revocation is the supreme sanction that the Administrator
8 is empowered to invoke. But as I've been reminded in some other cases
9 that I've heard, which I've stated and I'll state it right now, that
10 revocation, in and of itself, does not necessarily end an airman's
11 career as it may appear to be at the outset.

12 The Federal Aviation Administrator has every right where he
13 has a violation of 61.153(c) of the Federal Aviation Regulations to
14 enforce that provision that an ATP certificate holder must be of good
15 moral character. So that, ladies and gentlemen, I cannot reject the
16 Administrator being validly premised in bringing this action. The
17 Administrator is constantly vigilant to see that the Federal Aviation
18 Regulations in all respects are being observed.

19 The Respondent, being a very young man, having good
20 experience, having no previous or prior violations or infractions on
21 his record, where the FAA is concerned, as I said and based on previous
22 cases of revocation, it's not the end of the world for the Respondent,
23 and it may not be as harsh as it would appear at this moment. So that,
24 ladies and gentlemen, based upon my review of the testimony in this
25 proceeding, I will now proceed to make the following specific findings

1 of fact and conclusions of law:

2 One, the Respondent, Jeffrey D. Spyke admits and it is found
3 that he was and is the holder of airline transport pilot certificate
4 number (omitted).

5 Two, Respondent admits and it is found on November 26, 2007,
6 Respondent applied for and was issued a first-class airman medical
7 certificate by Paul A. Haight, a designated medical officer.

8 Three, Respondent admits and it is found that in
9 Respondent's application for that certificate, and in response to
10 question 18W, a history of non-traffic convictions, Respondent
11 answered "no."

12 Four, it is found that declaration on that airman medical
13 certificate application as to Respondent's non-traffic related
14 convictions was knowingly and intentionally false.

15 Five, it is found that on October 16th, 2005, the Respondent
16 was found guilty of violating section 750.539(2)(b) of the Michigan
17 Penal Code, to wit capturing or attempting to capture the image of women
18 in a bathroom, under circumstances where those individuals had a
19 reasonable expectation of privacy.

20 Six, Respondent admits and it is found that violation of
21 Michigan Compiled Law section 750.239(2)(b) is a felony, carrying a
22 penalty up to five years in jail and up to a \$5,000 fine.

23 Seven, Respondent admits and it is found that Respondent was
24 sentenced to 30 days in jail, with a \$2500 fine, and 24 months
25 probation.

1 Eight, it is found by reason of the foregoing facts and
2 circumstances that Respondent has violated section 61.153(c) of the
3 Federal Aviation Regulations, which mandates that a person must be of
4 good moral character to be eligible to hold an airline transport pilot
5 certificate.

6 Nine, it is found by virtue of the above allegations that
7 at least at this time Respondent Spyke does not possess the good moral
8 character required of a holder of an airline transport pilot
9 certificate, because of the aforesaid violations pertaining to
10 falsification, and the Federal Aviation Regulations pertaining to
11 possessing good moral character.

12 Ten, this Judge finds that safety in air commerce or air
13 transportation and the public interest does require the affirmation
14 of the Administrator's Emergency Order of Revocation dated December
15 10th, 2008, because of the aforesaid falsification and the moral
16 character issue, all of which the Respondent was found to be in
17 violation of.

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ORDER

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IT IS ORDERED AND ADJUDGED that the Administrator's Order
of Revocation dated December 10th, 2008, be and the same hereby is
affirmed. This order is issued by William E. Fowler, Jr., a United
States Administrative Law Judge.

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DATED AND EDITED ON
JANUARY 14, 2009

William E. Fowler, Jr.
Administrative Law Judge

APPEAL

JUDGE FOWLER: On the issue of appeal, either party to this proceeding may appeal the Judge's oral initial decision. The Appellant must file his Notice of Appeal within two days following the Judge's oral decision. In order to perfect his appeal, the Appellant must file a brief within five days following the Judge's oral initial decision.

The Notice of Appeal and the brief shall be filed with the National Transportation Safety Board, Office of Judges, 490 L'Enfant Plaza East, Southwest, Washington, D.C. 20594. If no appeal to the Board from either party is received or if the Board of its own volition does not file a motion to review the Judge's oral initial decision, then the Judge's decision shall become final. Timely filing of such an appeal, however, shall stay the Order as contained in the Judge's decision.

Let me say that since this is an emergency proceeding I would like to ask, has the Respondent surrendered his certificate, Mr. Brown?

MR. BROWN: No, he has not.

JUDGE FOWLER: Let the record indicate that Respondent has not surrendered his certificate and he must do this or otherwise file an affidavit with the Board, setting forth validly premised reasons as to why he has not done this.

1 JUDGE FOWLER: Off the record.

2 (Off the record)

3 JUDGE FOWLER: Let the record indicate that I inadvertently
4 misspoke myself about the time of the imprisonment of the Respondent.
5 It was not two years, it was 30 days. Is that correct, Mr. Tolley?

6 MR. TOLLEY: Yes.

7 JUDGE FOWLER: All right. If there is nothing further at
8 this time, before we conclude the hearing I would like to thank both
9 counsel for their extremely diligent and industrious efforts on behalf
10 of their respective clients.

11 I would also like to thank all the witnesses for their help,
12 assistance and cooperation as well as their patience during the course
13 of this proceeding. Thank you all. We stand adjourned.

14 (Whereupon, at 4:03 p.m., the hearing in the above-entitled
15 matter was concluded.)