

SERVED: January 9, 2012

NTSB Order No. EA-5611

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 9<sup>th</sup> day of January, 2012

_____	)	
MICHAEL P. HUERTA,	)	
Acting Administrator,	)	
Federal Aviation Administration,	)	
	)	
Complainant,	)	
	)	Docket SE-19203
v.	)	
	)	
STEPHEN L. TAYLOR,	)	
	)	
Respondent.	)	
	)	
_____	)	

**OPINION AND ORDER**

**1. Background**

Respondent appeals the oral initial decision of Administrative Law Judge Alfonso J. Montaña, issued December 15, 2011.<sup>1</sup> By that decision, the law judge determined respondent violated 14 C.F.R. § 67.403(a)(1).<sup>2</sup> The law judge ordered revocation of respondent’s airline

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

<sup>2</sup> The pertinent portion of section 67.403(a)(1) prohibits a person from making fraudulent or intentionally false statements on an application for a medical certificate.

transport pilot (ATP) certificate, first-class medical certificate, and any other airman certificates which respondent might hold based upon the violation of § 67.403(a)(1). We deny respondent's appeal.

*A. Facts*

Respondent first applied for a Federal Aviation Administration (FAA) medical certificate in March 1983. Between 1996 and 2007, respondent annually filed an application for his medical certificate. Over the course of his aviation career, respondent logged nearly 10,000 hours of flight time between commercial and military aircraft. Starting in 1999, respondent flew for a company called NetJets. In 2007, respondent assumed a managerial role with NetJets. Since he was no longer flying for the company, respondent allowed his medical certificate to lapse. As a result, he did not submit a medical certificate application to the FAA between December 2007 and June 2011 – a period of more than 3.5 years.

On August 15, 2008, the California Highway Patrol arrested respondent for driving under the influence of alcohol (DUI).

In June 2011, respondent's employer requested he resume flying duties. Respondent contacted an airmen medical examiner (AME) in Delaware, Ohio. The AME informed respondent about the FAA's online system for the medical application, called MedXPress.<sup>3</sup> Respondent went online the night before his physical, filled out the FAA Form 8500-8 online, electronically signed the form, and electronically submitted it to the FAA.<sup>4</sup> Without reading a single question on the online form in items 18.a.-y., respondent selected the box permitting him

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<sup>3</sup> See <https://medxpress.faa.gov/medxpress/MedCert.exe/ade85008>.

<sup>4</sup> The online form contains a warning message just prior to the signature block (where the applicant must enter his or her assigned MedXPress password) informing the applicant that once the form is submitted to the FAA, only an AME will be able to make changes to the form at the time of the applicant's physical examination.

to set all blank items in 18a.-y. to “no.” Tr. at 24. Not knowing or realizing the FAA had changed the form since December 2007, respondent incorrectly thought he had nothing to report. By selecting the “all no” button, respondent answered “no” to question 18.v. on the form inquiring about his DUI arrest history.

### *B. Procedural Background*

The Administrator issued the emergency revocation order,<sup>5</sup> which became the complaint in this case, on November 9, 2011, alleging respondent violated 14 C.F.R. § 67.403(a)(1) by answering “no” to question 18.v. on his 2011 medical application. The case proceeded to hearing on December 15, 2011. At the hearing, the parties stipulated to the vast majority of facts in this case. See ALJ Ex. 1. In the stipulation, the parties also agreed the Administrator had met the first two prongs of the Hart v. McLucas intentional falsification test, narrowing the litigation solely to the third prong of the test.<sup>6</sup>

### *C. Law Judge Oral Initial Decision*

At the conclusion of the hearing, the law judge found respondent intentionally falsified the application at issue. The law judge applied the Board’s precedent in Administrator v. Boardman<sup>7</sup> and Administrator v. Cooper<sup>8</sup> in reaching his decision stating, “[t]hose cases essentially hold that the failure to read and consider a question on a medical application carefully

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<sup>5</sup> 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.

<sup>6</sup> Hart v. McLucas, 535 F.2d 516, 519 (9<sup>th</sup> Cir. 1976) (to prove intentional falsification, the Administrator must prove an airman: (1) made a false representation, (2) in reference to a material fact, (3) with knowledge of the falsity of the fact).

<sup>7</sup> NTSB Order No. EA-4515 (1996).

<sup>8</sup> NTSB Order No. EA-5538 (2010), aff’d, 660 F.3d 476 (D.C. Cir. 2011).

before providing an answer did not establish a defense to allegations that [r]espondent made knowingly false entries on a medical certificate.” Initial Decision at 50-1. The law judge also found respondent’s contention that he assumed nothing had changed on the medical certificate for over 3.5 years unreasonable and not credible. Initial Decision at 51. The law judge upheld the revocation noting he did not find the Administrator’s proposed sanction arbitrary, capricious, or otherwise not in accordance with law. Initial Decision at 54.

#### *D. Issues on Appeal*

Respondent appealed the law judge’s decision. Respondent contends his case is factually distinguishable from Boardman and Cooper. He argues the law judge erred in making a finding of fact relating to the credibility determination and requests we remand the case. He also asserts our decisions in Boardman and Cooper violate due process as they serve to divest the law judge of his responsibility to determine a respondent’s *scienter*<sup>9</sup> as required to prove an offense under § 67.403(a)(1). The Administrator disputes each of respondent’s arguments, and urges us to affirm the law judge’s decision.

## **2. Decision**

As mentioned supra, with regard to the issue of intentional falsification of a medical application, 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>10</sup> In Administrator v. Dillmon,<sup>11</sup> after remand from the D.C. Circuit, we clarified our analysis of this three-prong test. We consider our law judges’

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<sup>9</sup> “[I].e., knowledge of falsity, for liability.” Hart v. McLucas, 535 F.2d at 520.

<sup>10</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>11</sup> NTSB Order No. EA-5528 (2010).

credibility findings, as well as other relevant evidence, concerning a respondent's subjective understanding of a question on the medical application. If a respondent contends he or she is confused about the meaning of a question, we look to our law judges to make a credibility determination concerning the alleged confusion and the respondent's state of mind at the time he or she completed the application.<sup>12</sup> We will defer to our law judge's credibility findings unless those findings are arbitrary and capricious.<sup>13</sup> However, Dillmon provides no guidance on analyzing a case in which a respondent simply does not read a question.

The relevant case law in examining situations in which a respondent fails to read a question on a medical certificate is Cooper and Boardman. In Dillmon, the D.C. Circuit summarized the Boardman decision as follows: "Boardman stands for the proposition that the airman *must read* the question carefully before answering it."<sup>14</sup> (emphasis added). Indeed, in Boardman, we stated:

It seems to us that an airman who, knowing [that the Administrator relies on the accuracy of answers on a medical certificate application], tenders an application that turns out to have a wrong answer to one or more of many questions he freely chose not even to read, much less to thoughtfully answer, cannot reasonably argue that he lacked the intent to give false information, for the submission of inaccurate information is a natural and foreseeable consequence of completing an application in a manner that essentially guarantees its unreliability.<sup>15</sup>

We further stated an airman, "having acted in a manner that could be viewed as evincing a willful disregard of the truth [by not reading the questions on a medical certificate application, as the respondent in Boardman,] should be determined to have intended that whatever answer he

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<sup>12</sup> Id. at 12-14.

<sup>13</sup> Administrator v. Porco, NTSB Order No. EA-5591 at 5 (2011).

<sup>14</sup> Dillmon v. NTSB, 588 F.3d 1085, 1094 (D.C. Cir. 2009).

<sup>15</sup> NTSB Order No. EA-4515 at 3-4 (footnote omitted).

gave be utilized in the review of his qualifications.”<sup>16</sup> In both Cooper and Boardman, the respondents testified they simply copied answers from a previous application without reading the application itself. In those cases, we held a failure to read a question before answering it renders the entire medical certificate application process pointless, and does not provide a defense to a charge of § 67.403(a)(1). Recently, in Cooper v. NTSB, the D.C. Circuit affirmed this analysis, noting “[b]ecause the willful disregard standard articulated in Administrator v. Boardman, and endorsed by the FAA is a reasonable interpretation of the regulation, the Board's deference to the FAA's interpretation of its regulation was not arbitrary or capricious, an abuse of discretion, or contrary to law.”<sup>17</sup>

*A. Comparison of this Case to Cooper and Boardman*

Respondent contends his case is factually distinguishable from Cooper and Boardman, and thus is not governed by those cases. We find this argument without merit. As acknowledged in his brief, respondent, similar to the respondents in Cooper and Boardman, admits he did not read question 18.v. In fact, respondent admits he chose not to read any of the 25 items (18.a.-y.) contained within question 18.<sup>18</sup> Respondent, just like the respondent in

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<sup>16</sup> Id. at 4 (footnote omitted).

<sup>17</sup> 660 F.3d 476, 478 (D.C. Cir. 2011).

<sup>18</sup> On direct examination, the following exchange occurred between respondent’s counsel and respondent:

Q: Did you read the questions before checking “all no”?

A: I did not read a single question.

Q: Any why is that?

A: Well, I mean, I've done it so many times in the past I didn't feel that anything applied to me. They seemed, you know—I wasn't aware of any changes. It didn't seem necessary, which now I understand that it probably was necessary.

Tr. at 24.

Cooper, testified had he read the question, he would have checked “yes.” Tr. at 25. Respondent, also like the respondent in Cooper, knew he had been arrested at the time he completed his medical application. Finally, just as in Cooper, respondent claimed he did not know the FAA form had changed.

Respondent attempts to distinguish his case from Cooper by arguing the respondent in Cooper also needed to report under the prior version of the medical certificate form since the respondent in that case had a DUI-related driver’s license suspension. However, our analysis in Cooper did not even reach that fact since we found Cooper admitted he failed to read the application. Also, respondent asserts, unlike in Cooper, he used the FAA’s MedXPress online system to fill out his application instead of simply copying answers from his prior form. We find the media in which a respondent chooses to fill out the form irrelevant to our inquiry. Respondent did not read the form. Whether he was copying answers by hand or clicking an “all no” box on his computer, the result is the same—respondent chose not to read carefully the form before providing his answers to the FAA.

Respondent also believes the AME would have cleared him for a medical certificate even if he properly had checked “yes” to question 18.v. However, whether the AME would have issued the medical certificate if the application properly was completed is not the relevant issue here. Respondent, by not answering the question correctly, effectively prevented the AME from engaging in such a determination. The D.C. Circuit rejected this very argument in Cooper, noting:

Although [Cooper’s AME] subsequently determined that the arrest and suspension did not disqualify Cooper, the Board could reasonably conclude that such a sequence of events is not the regime contemplated by the FAA in promulgating section 67.403(a)(1). As the Board noted in Boardman, “[a]n individual who has discharged his obligation to furnish reliable, personal medical information in such an untrustworthy fashion has obtained by trick any medical

certificate thereafter received and, at the same time, he has called in question his qualification to hold any airman certificate, since an individual possessing the care, judgment, and responsibility required of a certificate holder would not file a medical certificate application whose truthfulness was in doubt.<sup>19</sup>

In conclusion, we find the law judge's decision in the instant case consistent with our prior holdings in Boardman and Cooper and with the D.C. Circuit's denial of respondent's petition for review in Cooper v. NTSB, and find no reason to treat this case differently.

#### B. *MedXPress Online Application Process*

Respondent also argues "[t]he FAA implicitly encourages and induces airmen not to read the questions related to 18 by having the 'check all no' button to the questions BEFORE the questions are asked" (Appeal Br. at 10) and later states "[t]he FAA is entrapping airmen with this button by soliciting the airmen to save 4 minutes.<sup>20</sup> There is no legitimate purpose of having this 'all no' button prior to the questions you are asked to answer no to." (Appeal Br. at 11). On pages 9-10 of his brief, respondent provides a purported example of how the Form 8500-8

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<sup>19</sup> 660 F.3d at 485.

<sup>20</sup> To the extent respondent appears to argue the FAA website at <https://medxpress.faa.gov/medxpress/MedCert.exe/ade85008> informs airmen that they can save four minutes time by clicking "all no," we found no such evidence upon reviewing this website. Furthermore, on cross-examination, respondent testified he had sufficient time to fill out the online application:

Q: Now, when you made out the application online that was the night before you actually had the physical examination; is that correct?

A: That's correct, yes.

Q: What time of night did you do that?

A: Probably 10:30, 11:00 at night.

Q: So you had an opportunity to look at the medical application online, decide how you wanted to answer the questions, and answer them; isn't that correct?

A: Yeah, I did have that opportunity. I didn't take that opportunity, but I apparently had that opportunity.

looked to respondent as viewed on the FAA website.<sup>21</sup> The example lists the questions on the application from question 1 up to the “set all blank items to no” button located in question 18 but does not include the 25 items listed in question 18 or any of the questions following question 18.

Upon reviewing the website link provided in both respondent’s brief and the Administrator’s reply, we discovered the purported example of the website contained at pages 9-10 of respondent’s brief is a copy and paste version of the words from the website, rather than a screenshot of what respondent would have viewed on his computer screen when filing out his application online. A screenshot would maintain the formatting of the questions on the website (including items such as tables, pictures, buttons, etc.) as respondent viewed it, whereas the copy and paste version which respondent provided us removes the formatting of the website, leaving only the words from the questions.

To assist in our analysis of this case and provide a clear record, we have attached to this opinion a screenshot version of the online application. See Appendix. After reviewing the actual FAA website, we find misleading respondent’s assertion that “[f]ollowing the initial questions 1-17, and *before even seeing questions involving 18*, there is a button” (Appeal Br. at 10 (emphasis added)) permitting an applicant to check no to all questions in 18. This statement coupled together with the copy and paste version of the questions in respondent’s brief incorrectly implies an airman can check no to all the items in question 18 without ever viewing the questions themselves on the website. However, on the website, the “Set All Blank Items in 18.a.-y. to No” button is directly above and adjacent to questions 18.a.-y. listed in tabular form. See Appendix at 2. Respondent simply could have reviewed the questions and then chosen to answer them, either individually or by setting all blank items to no. Instead, he consciously

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<sup>21</sup> In his brief, respondent asserts “here is what [r]espondent would have seen.” Appeal Br. at 9.

chose not to read any of the questions and instead checked no to all the questions.<sup>22</sup> Upon careful review of the FAA MedXPress website, we find this FAA website does not induce or entrap airman into selecting the answer “no” to all the questions.

*C. Alleged Misstatements of Fact by the Law Judge*

Respondent asserts the law judge, in making a credibility determination of respondent, cited to facts not in evidence. Under a willful disregard analysis, a law judge’s credibility determination is not necessary to deciding the case since a respondent has admitted he or she did not read the questions on the medical application. In this case, having rejected respondent’s argument that this case should not be governed by Cooper and Boardman, we find the law judge’s credibility determination unnecessary to our analysis of this case. Nevertheless, the law judge’s decision clearly shows he made a credibility finding to provide further analysis in the event the Board found Dillmon, rather than Boardman or Cooper, applicable to this case. In discussing his credibility finding, the law judge stated, “[t]hus, even if the case should be decided under Dillmon, I would still find against [r]espondent as I do not find his testimony on the issues that matter in this case to be credible.” Initial Decision at 52. In Dillmon-type intentional falsification cases, where a respondent contends he or she is confused about the meaning of a question on the medical application, the Board has provided clear guidance to the law judges to make a credibility determination concerning the respondent’s state of mind at the time he or she completed the application—directly evaluating the *scienter* element. However, in Cooper-type cases, where a respondent fails to read a question on the medical application, no *scienter* element is involved; rather we examine those cases under a willful disregard standard.

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<sup>22</sup> Respondent states his AME told him about the check all no button, but acknowledges his AME did not know of the arrest when informing him of the button. Tr. at 33.

Furthermore, we find no error in the law judge's findings of fact in this case.

Respondent's asserts the law judge incorrectly stated when respondent submitted his medical application the arrest was "in the front of his mind." Appeal Br. at 14. We find phrase "in the front of his mind" is not contained anywhere within the 56-page transcript of the hearing. Moreover, we find respondent's argument on this point pure semantics. The law judge's questioning of respondent and the law judge's subsequent statement in the initial decision both indicate respondent did not believe he had to report anything other than a conviction on his medical application.<sup>23</sup> Since he failed to read the application, respondent did not realize he needed to report his arrest. Whether this fact was in the front of respondent's mind or was not on his mind at all matters not to this analysis—the result is the same in either case—respondent knew he had been arrested and failed to report that arrest to the FAA since he chose not to read the questions on the medical application. We therefore do not find the law judge made an erroneous factual finding in this case.

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<sup>23</sup> Upon respondent's questioning by the law judge, the following exchange occurred:

Q: Okay. And so, when you filled out the form you knew that [the arrest] happened?

A: Absolutely. Yes, sir.

Q: And that was in your mind at the time you filled it out?

A: No, sir. It wasn't. I—my impression of that situation was that, you know, there was no conviction—my license was never taken—and conviction was the word that I was concerned with from the 20 previous applications I had filled out, and I didn't even think about the word arrest at all.

Tr. at 35. In his initial decision, the law judge stated, "[i]n response to my question he testified that he had thought about his August 15, 2008 arrest at the time he filled out the application, but he did not believe he had to report it as he had not been convicted." Initial Decision at 50.

### C. *Due Process Violation*

We also reject respondent's contention the Board's case law under Boardman and Cooper violates due process by removing the law judge's discretion to look at the particular facts and circumstances of a case and determine the *scienter* element under Hart v. McLucas. In Cooper, the D.C. Circuit articulated the proper legal standard to apply in cases where a respondent fails to read a question on the medical application.

To the extent Cooper hints that the Board was required to defer to the ALJ's findings regarding his subjective intent at the time he answered the questions on the application, he simply ignores that in his case, by contrast with those previously before the court, there is no question whether the airman's subjective understanding of a question he read negates his *scienter*. See Dillmon, 588 F.3d at 1094. Regardless of whether he had a motive to falsify his answer to Question 18v, by not reading the question before answering it, Cooper rendered the application unreliable and he obtained a medical certificate based on false information.<sup>24</sup>

Thus, the Board's analysis cases, such as the case *sub judice*, under a willful disregard standard does not violate due process principles.

### D. *Sanction*

Contained within respondent's due process argument, respondent also contends the law judge violated his due process rights because the law judge had no discretion to review the proposed sanction by the Administrator. This contention is a misstatement of the law. Under 14 C.F.R. § 67.403(b)(1), the commission of an act prohibited under § 67.403(a)(1) is a basis for suspending or revoking all airman, ground instructor, and medical certificates and ratings held by that person. In accordance with the general administrative law principles of deference, in Administrator v. Peacon, we held

where the Administrator establishes before the law judge the existence of validly adopted written policy guidelines, the law judge must impose a sanction that falls

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<sup>24</sup> 660 F.3d at 485.

within the range of sanctions suggested therein, unless he finds that application of the guidelines by the Administrator was arbitrary, capricious, or otherwise not in accordance with law.<sup>25</sup>

While we apply these principles of deference with respect to sanction, we recently held we will consider aggravating and mitigating factors in evaluating an imposed sanction.<sup>26</sup> Furthermore, we compare factually similar cases in determining whether the Administrator's choice of sanction was arbitrary, capricious, or not in accordance with law.<sup>27</sup>

We find respondent provides no compelling reason why his certificates should not be revoked. While respondent cites to his nearly 10,000 hours of flight time and his violation-free history as mitigation, we previously held that we view a violation-free history as status quo, rather than a mitigating circumstance.<sup>28</sup> Revocation for this type of violation is also consistent with other factually similar cases, namely Boardman and Cooper, discussed supra. Boardman held a commercial pilot certificate and Cooper, like respondent, held an ATP certificate—the highest level certificate. Finally, we long have held revocation of all airman certificates is the appropriate sanction for a violation of § 67.403(a)(1).<sup>29</sup>

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<sup>25</sup> NTSB Order No. EA-4607 at 2 (1997). See generally 49 U.C.S. § 44709(d)(3) (“When conducting a hearing under this subsection, the Board is not bound by findings of fact of the Administrator but is bound by all validly adopted interpretations of laws and regulations the Administrator carries out and of written agency policy guidance available to the public related to sanctions to be imposed under this section unless the Board finds an interpretation is arbitrary, capricious, or otherwise not according to law.”).

<sup>26</sup> See Administrator v. Hackshaw, NTSB Order No. EA-5501 (2010) (recon. denied, NTSB Order No. EA-5522 (2010)) and Administrator v. Simmons, NTSB Order No. EA-5535 (2010).

<sup>27</sup> Administrator v. Simmons, NTSB Order No. EA-5535 at 9; see also Administrator v. Poland, NTSB Order No. EA-5449 at 9-10 (2009).

<sup>28</sup> See, e.g., Administrator v. Mize, NTSB Order No. EA-5580 at 15 (2011) (citing Administrator v. Hart, 5536 (2010); Administrator v. Rezendes, NTSB Order No. EA-5127 (2004); and Administrator v. Thompson, 7 NTSB 714 (1991)).

<sup>29</sup> See, e.g., Administrator v. Culliton, NTSB Order No. EA-5178 at 6-7 (2005); Administrator v.

**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 and first-class medical certificates, and any other certificates respondent holds, is affirmed.

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

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(..continued)  
McCarthy, 7 NTSB 670, 672 (1990).



# FAA MEDXPRESS

FEDERAL AVIATION ADMINISTRATION

- ▶ home
- ▶ logout
- ▶ help
- ▶ ame guide

Enter all date in MM/DD/YYYY format unless otherwise specified.  
 Click the question mark icon next to the item number to access the AME Guide page for that item. Instructions for completing the application can be found by clicking the help link above.

? 1. Application For:  Airman Medical Cert.  Airman Medical & Student Pilot Cert. ? 2. Class of Medical Cert.:  1st  2nd  3rd

? 3. Last Name: \_\_\_\_\_ ? First Name: \_\_\_\_\_ | ? Middle Name: \_\_\_\_\_ ? Suffix: \_\_\_\_\_

? 4. SSN: \_\_\_\_\_  International/Declined to Submit (An SSN will be generated by the system)

? 5. Address: \_\_\_\_\_ ? Telephone Number: \_\_\_\_\_

? City: \_\_\_\_\_ ? State: \_\_\_\_\_ ? Country: USA \_\_\_\_\_ ? Zip Code: \_\_\_\_\_

? 6. Date of Birth: \_\_\_\_\_ ? 7. Hair Color: \_\_\_\_\_ ? 8. Eye Color: \_\_\_\_\_ ? 9. Sex:  Male  Female

? Citizenship: USA

? 10. Type of Airman Certificate(s) You Hold:

<input type="checkbox"/> None	<input type="checkbox"/> ATC Specialist	<input type="checkbox"/> Flight Instructor	<input type="checkbox"/> Recreational
<input type="checkbox"/> Airline Transport	<input type="checkbox"/> Flight Engineer	<input type="checkbox"/> Private	<input type="checkbox"/> Other _____
<input type="checkbox"/> Commercial	<input type="checkbox"/> Flight Navigator	<input type="checkbox"/> Student	

? 11. Occupation: \_\_\_\_\_ ? 12. Employer: \_\_\_\_\_

? 13. Has Your FAA Airman Medical Certificate Ever Been Denied, Suspended, or Revoked?  Yes  No ? If yes, give date: \_\_\_\_\_

Total Pilot Time (Civilian Only)

? 14. To Date: \_\_\_\_\_ ? 15. Past 6 months: \_\_\_\_\_ ? 16. Date of Last FAA Medical Application: \_\_\_\_\_ ?  No Prior App

? 17.a. Do You Currently Use Any Medication (Prescription or Nonprescription)?  Yes  No

**For each medication prescribed, enter medication information and click the Add button. Medication Name is required, all other fields are optional.**

Medication Name: \_\_\_\_\_

Dosage: \_\_\_\_\_

Dosage Unit: \_\_\_\_\_

Frequency: \_\_\_\_\_

Previously Reported

Add

Medication	Dosage Amount	Dosage Unit	Frequency	Previously Reported
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FAA MedXPress medication content is validated against licensed drug information supplied by the F.A. Davis Co. (FAD) in the Davis's Drug Guide. Click [here](#) to view the FAD copyright notice and Disclaimer of Warranty.

? 17.b. Do You Ever Use Near Vision Contact Lens(es) While Flying?  Yes  No

? 18. Medical History - HAVE YOU EVER IN YOUR LIFE BEEN DIAGNOSED WITH, HAD, OR DO YOU PRESENTLY HAVE ANY OF THE FOLLOWING? Answer "yes" or "no" for every condition listed below (All "yes" answers require a comment. Click Add Comments to add or edit a comment).

Set All Blank Items in 18a - y to No

Medical History	Description	Medical History	Description
a. <input type="radio"/> Yes <input type="radio"/> No	Frequent or severe headaches	m. <input type="radio"/> Yes <input type="radio"/> No	Mental disorders of any sort: depression, anxiety, etc.
b. <input type="radio"/> Yes <input type="radio"/> No	Dizziness or fainting spell	n. <input type="radio"/> Yes <input type="radio"/> No	Substance dependence or failed a drug test ever; or substance abuse or use of illegal substance in the last 2 years.
c. <input type="radio"/> Yes <input type="radio"/> No	Unconsciousness for any reason	o. <input type="radio"/> Yes <input type="radio"/> No	Alcohol dependence or abuse
d. <input type="radio"/> Yes <input type="radio"/> No	Eye or vision trouble except glasses	p. <input type="radio"/> Yes <input type="radio"/> No	Suicide attempt
e. <input type="radio"/> Yes <input type="radio"/> No	Hay fever or allergy	q. <input type="radio"/> Yes <input type="radio"/> No	Motion sickness requiring medication
f. <input type="radio"/> Yes <input type="radio"/> No	Asthma or lung disease	r. <input type="radio"/> Yes <input type="radio"/> No	Military medical discharge
g. <input type="radio"/> Yes <input type="radio"/> No	Heart or vascular trouble	s. <input type="radio"/> Yes <input type="radio"/> No	Medical rejection by military service
h. <input type="radio"/> Yes <input type="radio"/> No	High or low blood pressure	t. <input type="radio"/> Yes <input type="radio"/> No	Rejection for life or health insurance
i. <input type="radio"/> Yes <input type="radio"/> No	Stomach, liver, or intestinal trouble	u. <input type="radio"/> Yes <input type="radio"/> No	Admission to hospital
j. <input type="radio"/> Yes <input type="radio"/> No	Kidney stone or blood in urine	x. <input type="radio"/> Yes <input type="radio"/> No	Other illness, disability, or surgery
k. <input type="radio"/> Yes <input type="radio"/> No	Diabetes	y. <input type="radio"/> Yes <input type="radio"/> No	Medical disability benefits
l. <input type="radio"/> Yes <input type="radio"/> No	Neurological disorders: epilepsy, seizures, stroke, paralysis, etc.		

**Arrest and/or Conviction and/or Administrative Action History**

v. <input type="radio"/> Yes <input type="radio"/> No	History of (1) any arrest(s) and/or conviction(s) involving driving while intoxicated by, while impaired by, or while under the influence of alcohol or a drug; or (2) history of any arrest(s), and/or conviction(s), and/or administrative action(s) involving an offense(s) which resulted in the denial, suspension, cancellation, or revocation of driving privileges or which resulted in attendance at an educational or a rehabilitation program.
w. <input type="radio"/> Yes <input type="radio"/> No	History of nontraffic conviction(s) (misdemeanors or felonies).

Add Comments

? 19. Have you visited any health professionals within the last 3 years?:  Yes  No

To add a Medical Visit, enter information in the spaces provided and click the Add button.  
Note: You must click the add button for each visit entered.

Date of Visit (MM/YYYY): \_\_\_\_\_ Name: \_\_\_\_\_ Street: \_\_\_\_\_  
City: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_ Country: USA \_\_\_\_\_  
Type Professional: \_\_\_\_\_ Reason: \_\_\_\_\_

Add

Date	Name	Number/Street	City	State	Zip Code	Country	Type Professional	Reason		
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**20. Applicant's National Driver Register and Certifying Declarations:**

I hereby authorize the National Driver Register (NDR), through a designated State Department of Motor Vehicles, to furnish to the FAA information pertaining to my driving record. This consent constitutes authorization for a single access to the information contained in the NDR to verify information provided in this application. Upon my request, the FAA shall make the information received from the NDR, if any, available for my review and written comment. Authority: 23 U.S. Code 401, Note.

**NOTE: ALL persons using this form must sign it. NDR consent, however, does not apply unless this form is used as an application for Medical Certificate or Medical Certificate and Student Pilot Certificate.**

I hereby certify that all statements and answers provided by me on this application form are complete and true to the best of my knowledge, and I agree that they are to be considered part of the basis for issuance of any FAA certificate to me. I have also read and understand the Privacy Act statement that accompanies this form.

Yes  No

- NOTICE -

Whoever in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals or covers up by any trick, scheme, or device a material fact, or who makes any false, fictitious or fraudulent statements or representations, or entry, may be fined up to \$250,000 or imprisoned not more than 5 years, or both. (18 U.S. Code Secs. 1001; 3571).

Your application is not complete until you enter your password and press the "Submit" button at the bottom of this page.

I'm not done yet. Save my application so I can finish it later.

Show me any errors I have made on my application.

**I understand that by entering my password, I certify that I agree with the National Driver Register and Certifying Declarations. I further understand that I will not be able to change my application after I submit the information (only your AME will be able to change the application at the time of the physical exam).**

I'm done. Send my application to the FAA. Password: \_\_\_\_\_

Readers & Viewers: [PDF Reader](#)

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

\* \* \* \* \*

In the matter of: \*

MICHAEL P. HUERTA, \*  
ACTING ADMINISTRATOR, \*  
Federal Aviation Administration, \*

Complainant, \*

v. \*

Docket No.: SE-19203  
JUDGE MONTAÑO

STEPHEN L. TAYLOR, \*

Respondent. \*

\* \* \* \* \*

Department of Housing & Urban  
Development  
409 3rd Street, S.W.  
Hearing Room  
Washington, D.C.

Thursday,  
December 15, 2011

The above-entitled matter came on for hearing, pursuant  
to Notice, at 9:30 a.m.

BEFORE: ALFONSO J. MONTAÑO  
Administrative Law Judge

APPEARANCES:

On behalf of the Administrator:

JOSEPH R. STANDELL, ESQ.  
Aeronautical Center Counsel  
Mike Monroney Aeronautical Center  
6500 S. MacArthur Blvd.  
Oklahoma City, OK 73169-6901  
405-954-3296  
405-954-4676 (Fax)

On behalf of the Respondent:

TIMOTHY V. ANDERSON, ESQ.  
2492 N. Landing Road  
Suite 104  
Virginia Beach, VA 23456  
757-572-4427

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ORAL INITIAL DECISION AND ORDER

ADMINISTRATIVE LAW JUDGE MONTAÑO: This has been a proceeding under the provisions of 49 U.S.C. Section 44709, formerly Section 609 of the Federal Aviation Act and the provisions of the Rules of Practice in Air Safety Proceedings of the National Transportation Safety Board.

Stephen L. Taylor, the Respondent, appealed the Administrator's Emergency Order of Revocation dated November 9, 2011, which pursuant to Section 821.31(a) of the Board's Rules serves as the complaint in this case.

The Administrator ordered the revocation of Mr. Taylor's air transport pilot certificate, Number 003374653, and his first-class medical certificate based on the allegation that Respondent violated Section 67.403(a)(1) of the Federal Aviation Regulations in that he made or caused to be made a fraudulent or intentionally false statement on an application for a medical certificate.

The Administrator also alleged, pursuant to 67.403(c)(1), that Respondent's statement, if not fraudulent as alleged, is an incorrect statement entered upon a medical certificate upon which the FAA relies and is still the basis for the revocation of the Respondent's first-class medical certificate.

The Administrator maintains that pursuant to Section 67.403(b) of the Federal Aviation Regulations that a fraudulent or

1 intentionally false statement entered on an application for a  
2 medical certificate is the basis for revocation of Respondent's  
3 air transport pilot and his first-class medical certificate and  
4 any other medical and airman certificate issued to him.

5           The matter has been heard before me as an Administrative  
6 Law Judge for the National Transportation Safety Board. And as  
7 required by the Board's Rules in emergency proceedings, I am  
8 issuing a bench decision or an oral initial decision in this case.

9           Pursuant to notice this matter came on for trial today,  
10 December 15th, 2011, in Washington, D.C. The Administrator was  
11 represented by Joseph R. Standell, Esquire, Federal Aviation  
12 Administration. Mr. Taylor was represented by Timothy V.  
13 Anderson, Esquire. Mr. Taylor has been present in the courtroom  
14 and has testified in this case.

15           The parties were afforded a full opportunity to offer  
16 evidence, to call, examine, and cross-examine witnesses and make  
17 arguments in support of their respective positions. However, that  
18 was somewhat limited in that the parties had filed a joint  
19 stipulation, which I have read into the record, and the parties  
20 have agreed that my reading of the stipulation comports with their  
21 understanding of the stipulation.

22           I have considered all the evidence before me. While I  
23 may not mention all of it, I have considered all of it before  
24 issuing a decision in this case.

25           As I've said, the parties have filed a stipulation and

1 I've read it into the record. The Respondent denies paragraph 8  
2 of the Administrator's complaint, which reads that incident to  
3 paragraphs 2 and 3 above, your answer to item 18v on the  
4 application was fraudulent or intentionally false.

5 Respondent also denies a portion of paragraph 9 of the  
6 Administrator's complaint, which reads that a certificate -- that  
7 he certified that the above-described entries were complete and  
8 true knowing that said entry and certificate was, in fact, false.

9 The Administrator moved for the admission of Exhibits  
10 A-1 through A-16, which were admitted by stipulation. The  
11 Respondent did not move for the admission of any exhibits in this  
12 case.

13 Now, I'll talk about the testimony, but before I do that  
14 I'm going to go off the record for a second.

15 (Off the record)

16 (On the record)

17 ADMINISTRATIVE LAW JUDGE MONTAÑO: All right. We're  
18 back on the record.

19 All right. Counsel has pointed out as far as what  
20 Respondent has denied, he has denied paragraph 8 and has denied  
21 part of paragraph 10, which reads: "On item 20 of the referenced  
22 application form you certified that the above-described entries  
23 were complete and true knowing that said entries and  
24 certifications were false." He denies that latter portion of 10.

25 MR. STANDELL: Your Honor, I'm sorry. Could you keep

1 your voice up just a little?

2 ADMINISTRATIVE LAW JUDGE MONTAÑO: Sure. Sure thing.

3 I clarified that the Respondent has denied part of  
4 paragraph 10 and that's why I had to go back in the office to get  
5 that.

6 DISCUSSION

7 All right. Because of the stipulations that were  
8 entered by the parties, we had only the testimony of Mr. Taylor,  
9 which is the most salient and the most important testimony that I  
10 have to hear in this case.

11 He talked about his experience as a pilot, as a military  
12 pilot. He talked about his work as a transport with Executive  
13 Jets, which later became NetJets. His experience as a pilot is  
14 indeed impressive. There's numerous hours on various types of  
15 aircrafts. He even has a certification as a rotor aircraft pilot.  
16 He's reached the top certification a pilot can hope to achieve and  
17 that is being a air transport pilot.

18 So certainly as far as his background is concerned, that  
19 is certainly impressive. It is not everyone that can reach that  
20 degree of proficiency to obtain an air transport certificate.

21 As to the actual certificate at issue in this case, he  
22 testified that he filled out the application for the airman  
23 medical certificate first in 1983. Then on a yearly basis after  
24 -- well, first in 1983. Then in 1996, he began filling out the  
25 application for airman medical certificate yearly, since 1996 to

1 May of 2007. After May of 2007, he assumed more of a managerial  
2 role at NetJets and was not flying and did not obtain a medical  
3 certificate again until June 15th, 2011.

4 He testified on Direct that he had obtained that medical  
5 on June 15th, 2011 on a rush basis to assist a former work  
6 associate transport a plane. He filled out the application  
7 online, the first time he had ever used the online application  
8 process.

9 He testified that since he had always answered no to  
10 questions regarding convictions on all other forms that he had  
11 filled out since 1996, that he did the same on the June 15th, 2011  
12 application. He admits that he did not read the questions,  
13 specifically question 18v, and chose the button on the application  
14 program which answered no to all of the questions that related to  
15 that section of the application.

16 Respondent testified that he now realizes that he should  
17 have read the questions before answering no to question 18v. He  
18 testified that he did not know that the wording of question 18v  
19 had changed since September of 2008.

20 On cross-examination he testified that he would consider  
21 himself a person of above average intelligence. Certainly his  
22 ratings would indicate he is. And he agreed that he was capable  
23 of reading and understanding this application, the application for  
24 the airman's medical certificate.

25 He testified that he had filled out the application the

1 night before the medical examination. He testified that he did  
2 have time to read and consider all of the questions before he  
3 answered them, but he testified he did not read the questions  
4 because he assumed that nothing had changed since the 3-1/2 years  
5 before when he had filled out his last application for a medical  
6 certificate.

7 He also testified that the medical examiner told him to  
8 choose the "no to all questions" button; however, he agreed on  
9 cross-examination that the medical examiner did not know about his  
10 August 15, 2008 arrest. In response to my question he testified  
11 that he had thought about his August 15, 2008 arrest at the time  
12 he filled out the application, but he did not believe he had to  
13 report it as he had not been convicted.

14 And that completed all of the testimony in this case.  
15 The Administrator did not present any rebuttal case. Therefore,  
16 the only testimony I have to consider in making my decision is of  
17 course the testimony of the Respondent.

18 Now, the Administrator argues that he finds the -- or at  
19 least Administrator's counsel finds Mr. Taylor to be credible.  
20 But he argues that Mr. Taylor's own testimony -- through his own  
21 testimony has hung himself. The Administrator argues that this  
22 case should be decided based on the case precedent of  
23 Administrator v. Boardman and Administrator v. Cooper. Those  
24 cases essentially hold that the failure to read and consider a  
25 question on a medical application carefully before providing an

1 answer did not establish a defense to allegations that the  
2 Respondent made knowingly false entries on a medical certificate.

3 I have to agree with the Administrator. The Respondent  
4 admitted he did not read question 18v. He did not read the  
5 questions because he assumed the question was the same as it had  
6 been since he had been filling these applications out since 1996.  
7 The Administrator argues that such an assumption is not reasonable  
8 and with that I also agree.

9 He had not filled out an application for a medical  
10 certificate in 3-1/2 years. Respondent has extensive experience  
11 as a pilot in the Marines and as a private air transport pilot. I  
12 do not find reasonable Respondent's claim that he assumed the  
13 application for the medical certificate, specifically question  
14 18v, had not changed. Not only do I not find it reasonable, I do  
15 not find that credible. While he had always answered no to all of  
16 the other applications for a medical certificate, there was a  
17 significant difference in this case: as of June 15, 2011, he had  
18 been arrested on August 15, 2008.

19 Respondent testified that he had thought about his  
20 arrest the night he filled out the application for the medical  
21 certificate online, but he did not consider reading the form  
22 because he had not been convicted. Again, he had not filled out  
23 the application for a medical certificate for 3-1/2 years, yet he  
24 claimed to know how question 18v read. I do not find the  
25 Respondent's assertion to be credible.

1           I cannot find it credible that after having been  
2 arrested a pilot of Respondent's experience, intelligence, would  
3 not read the form to determine if his arrest would in any way  
4 affect the application. A medical application is an extremely  
5 important document. You can't fly without a medical certificate,  
6 whether you're a private pilot or an air transport pilot.  
7 Certainly the ability to fly turns on whether you have the medical  
8 certificate or not.

9           Thus, while I agree with the Administrator's argument  
10 that this case should be decided on the Boardman and Cooper case  
11 because the Respondent did not read the questions, I do not agree  
12 with the Administrator's assessment of the Respondent's  
13 credibility. I had a chance to view Mr. Taylor. Again, I find  
14 his experience to be extensive. I find a lot of his testimony,  
15 most of his testimony to be credible. However, again, I cannot  
16 find his testimony about his not reading and filling out and  
17 making the assumptions as to question 18v to be credible. Thus,  
18 even if the case should be decided under Dillmon, I would still  
19 find against the Respondent as I do not find his testimony on the  
20 issues that matter in this case to be credible.

21           Based on my review of all of the oral and documentary  
22 evidence in this case, I find that the Respondent did not sustain  
23 his burden of proving his affirmative defense by a preponderance  
24 of evidence, that being that he did not knowingly make a false  
25 entry on the medical application for a medical certificate.

1           Based on my review of all of the oral and documentary  
2 evidence presented in this case I find that the Administrator has  
3 established by a preponderance of reliable, probative and credible  
4 evidence that Respondent violated Section 67.403(a)(1) of the  
5 Federal Aviation Regulations. Therefore, I have to make the  
6 following findings of facts and conclusions of law as to those  
7 specific allegations in the Administrator's complaint.

8                           FINDINGS OF FACT AND CONCLUSIONS OF LAW

9           The only allegation that is in issue is in paragraph 8,  
10 which reads: "Incident to paragraph 2 and 3 above, your answer to  
11 item 18v on the application was fraudulent and intentionally  
12 false." I find that the Administrator has proven by a  
13 preponderance of probative, reliable and credible evidence that  
14 the answer to item 18v on the application was fraudulent or  
15 intentionally false.

16           As to paragraph 10, which reads: "On item 20 of the  
17 referenced application form you certified that the above-described  
18 entries were complete and true knowing that the said entry and  
19 certification was false", I find that the Administrator has proven  
20 by probative, credible and reliable evidence that the Respondent  
21 filled out item 20 of the referenced application certifying that  
22 the above-described entries were complete and true knowing that  
23 the said entries were false.

24           Thus, under the applicable standard in this case, which  
25 I described in the beginning, the Administrator has proven all the

1 elements of Hart v. McLucas in this case. So based on that  
2 finding I now turn to the sanction in this case.

3 As to the appropriate sanction, by statute, deference  
4 has to be shown to the choice of remedy chosen by the  
5 Administrator in the absence of any showing that a deference to  
6 that interpretation would be arbitrary, capricious or otherwise  
7 not in accordance with the law. There has been no such showing in  
8 this case. While there has been a suggestion that I perhaps  
9 impose a lesser sanction of a suspension, I cannot do that in this  
10 case.

11 I find, therefore, that the sanction sought by the  
12 Administrator is appropriate and warranted in the public interest  
13 in air commerce and air safety and, therefore, I find that the  
14 Emergency Order, the complaint herein, must be and shall be  
15 affirmed as issued.

16 I will issue the following order:  
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ORDER

IT IS ORDERED that the Emergency Order of Revocation, the complaint herein, be, and is hereby, affirmed as issued. The Respondent's air transport pilot certificate, Number 003374653, and his first-class medical certificate, and any other medical and airman certificate held by him, be, and are hereby, revoked.

This order is entered on the 15th day of December 2011 at Washington, D.C.

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ALFONSO J. MONTAÑO  
Administrative Law Judge

APPEAL

ADMINISTRATIVE LAW JUDGE MONTAÑO: I have had the court reporter hand out the instructions on appeal. And for the decisions in emergency cases it requires for -- basically, it reads that "any party to this emergency proceeding may appeal this Oral Initial Decision by filing a written Notice of Appeal within 2 days after the date on which it is rendered. An original and three copies of the Notice of Appeal must be filed with the National Transportation Board." And the sheet I have handed out includes all of the procedures to be followed.

Certainly there's a right to an appeal and I am not infallible. That is the beauty of this system, is that there's a

1 right to an appeal. The Board may review my decision and decide  
2 that it was -- reverse it, remand it, or affirm it. So certainly  
3 the appeal is available to you, Mr. Taylor.

4 Again, I have found your experience as an air transport  
5 pilot and as a pilot to be very, very impressive. Unfortunately,  
6 I'm bound by the evidence that I have to decide in this case.  
7 This is the evidence that I've heard and this is the evidence --  
8 the way that I've weighed the evidence. And that is -- with  
9 saying that, that will be my -- the conclusion of my Initial Oral  
10 Decision.

11 To make sure I didn't leave anything out, is there  
12 anything that the parties wish for me to point out in the  
13 decision?

14 MR. STANDELL: No, Your Honor.

15 MR. ANDERSON: No, Your Honor.

16 ADMINISTRATIVE LAW JUDGE MONTAÑO: All right.

17 All right. Well, I thank you all very much for being  
18 here and for your patience and with that I will go off the record.  
19 Thank you very much.

20 (Whereupon, at 12:30 p.m., the hearing in the above-  
21 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: Stephen L. Taylor

DOCKET NUMBER: SE-19203

PLACE: Washington, D.C.

DATE: December 15, 2011

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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Timothy Atkinson  
Official Reporter