

SERVED: November 20, 2013

NTSB Order No. EA-5686

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 19th day of November, 2013

_____)	
MICHAEL P. HUERTA,)	
Administrator,)	
Federal Aviation Administration,)	
)	
Complainant,)	
)	
v.)	Docket SE-19559
)	
MICHAEL JOSEPH CARPENTER,)	
)	
Respondent.)	
)	
_____)	

OPINION AND ORDER

1. Background

Respondent appeals the oral initial decision of Chief Administrative Law Judge Alfonso J. Montañó, issued on October 23, 2013.¹ By that decision, the law judge revoked respondent’s airman medical and airman certificates, finding respondent intentionally falsified information regarding prior criminal convictions in 13 medical certificate applications over a period of

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

11 years, in violation of 14 C.F.R. § 67.403(a)(1).² We deny respondent's appeal and affirm the law judge's oral initial decision.

A. Facts

Respondent was convicted under Alabama state law in 1992 for negotiating a worthless instrument, and he was also convicted in 1998 on 19 counts of theft of government property, a Federal crime.³ He received a fine of \$100 for the state-law conviction; as to the subsequent Federal convictions, he was sentenced to two concurrent sentences of probation for two years and ordered to pay \$6,853.70 in restitution.⁴

In 2001, three years after his Federal convictions, respondent applied to the Federal Aviation Administration (FAA) for a first-class airman medical certificate and answered "no" to question 18.w. on the FAA's medical certificate application, which asked whether respondent had a "[h]istory of nontraffic conviction(s) (misdemeanors or felonies)."⁵ Respondent provided the same answer in response to question 18.w. on 12 subsequent certificate applications between 2002 and 2011, and most recently on October 31, 2012.⁶

² 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.

³ See Ala. Code § 13A-9-13.1(c) (prohibiting negotiation of a worthless instrument); 18 U.S.C. § 641 (prohibiting, *inter alia*, theft of government property). Copies of respondent's criminal judgments and sentences in these cases appear in Exhs. A-14 through A-16.

⁴ Exh. A-14 (judgment and sentence for state conviction); A-15 and A-16 (judgments and sentences for Federal convictions).

⁵ Exh. A-13.

⁶ Exhs. A-1 through A-12.

On August 27, 2013, the Administrator issued an emergency order⁷ revoking respondent's commercial pilot, flight instructor, ground instructor, and first-class airman medical certificates on the basis of his "no" answers to question 18.w. on the medical certificate applications. The Administrator's complaint alleged respondent's answer on each application was an intentional falsification and respondent lacked the qualification necessary to possess his airman certificates.⁸

The case proceeded to hearing on October 22-23, 2013.⁹ Respondent admitted some allegations in the emergency order while denying others: he admitted that he answered "no" to question 18.w., that answers to all questions on the medical certificate application are material, and that the Administrator relied on his representations,¹⁰ but he contended his prior convictions did not fall within the ambit of question 18.w.

Prior to the hearing, respondent moved to dismiss the complaint on several grounds: (1) the Administrator's complaint was filed outside the six-month limitation of the Board's stale complaint rule under 49 C.F.R. § 821.33, (2) the complaint was barred under the equitable doctrine of laches because the Administrator unreasonably delayed bringing the complaint, and

⁷ 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. As noted, *infra*, due to the lapse in Federal funding and resulting government shutdown from October 1-16, this case could not be processed within the required 60-day timeframe. The 60-day timeframe expired on Monday, November 4, 2013. However, the Board proceeded to resolve the case as judiciously as possible once the government reopened.

⁸ Compl. ¶ 21.

⁹ The case initially was scheduled for a hearing before the law judge on October 2-3, 2013, but the lapse in Federal funding and resulting government shutdown from October 1-16 required postponement to October 22-23.

¹⁰ Tr. at 33-34.

(3) the hearing, postponed until October 22-23, was conducted contrary to the Board's requirement by regulation that emergency appeals of FAA enforcement orders proceed to hearing within 30 days of placement on the docket. The law judge denied respondent's motion as to each argument.¹¹

At the hearing, the Administrator called two witnesses, Dr. Susan E. Northrup, the FAA's Southern Regional Flight Surgeon, and Charles Phillips, a special agent assigned to the FAA's Law Enforcement Assistance Program. Dr. Northrup explained how the FAA processes and relies on certificate application forms. She testified under cross-examination that, in the normal course of processing certificate applications, the FAA "do[es] not have a method of" checking for serious non-traffic convictions, aside from asking airmen to provide that information by way of a response to question 18.w.¹²

Mr. Phillips testified he received a call in July 2012 from an Army investigator who was examining respondent's criminal history in a separate matter. As a result of that interaction, Mr. Phillips became aware respondent had a criminal history but noticed, upon examination of respondent's medical certificate application forms, respondent had checked "no" in answering question 18.w. on past forms. Mr. Phillips requested and, on August 23, 2012, obtained respondent's court records related to the 1992 and 1998 convictions and determined the convictions were inconsistent with respondent's answers to question 18.w. up to that point.¹³

¹¹ Id. at 9-10.

¹² Id. at 97-98.

¹³ Id. at 128-37.

In the meantime, on July 25, 2012, Mr. Phillips attempted unsuccessfully to send respondent a letter of investigation (LOI), which was returned as “unclaimed.”¹⁴ Mr. Phillips testified he “flagged” respondent’s identity with other FAA offices and obtained respondent’s updated mailing address based on respondent’s recently-completed flight physical form.¹⁵ Mr. Phillips resent the LOI to respondent’s updated address on November 19, 2012.¹⁶ Respondent replied by letter, generally denying any violation, on December 11, 2012.¹⁷ Mr. Phillips then assembled a case file,¹⁸ and on May 21, 2013, counsel for the Administrator dispatched a third LOI to respondent, apprising him of the Administrator’s allegations of violations.¹⁹ Respondent replied in writing and again denied the allegations, although his denial focused on his understanding that question 18.w. sought information regarding a “history of nontraffic conviction(s) (misdemeanors or felonies)” and his belief that his convictions did not amount to a “history.” He also argued he construed question 18.w. to seek information on convictions related to drug and alcohol offenses.²⁰

At the hearing, respondent, who by that time had completed first-year law school coursework and had received a Ph.D. in artificial intelligence,²¹ testified he believed his prior convictions were for mere “infractions,” rather than for the “misdemeanors or felonies”

¹⁴ Exh. A-22.

¹⁵ Tr. at 141.

¹⁶ Exh. A-23.

¹⁷ Exh. A-24.

¹⁸ Tr. at 143-44.

¹⁹ Exh. A-25.

²⁰ Exh. A-26.

²¹ Tr. at 172, 175-76.

referenced in question 18.w.²² Respondent said a defense lawyer who represented him in the Federal prosecution told him the charges amounted to “no more than spitting on the sidewalk.”²³

B. Law Judge’s Order

At the conclusion of the hearing, the law judge issued an oral initial decision affirming the Administrator’s order of revocation. Rejecting respondent’s testimony that he did not believe his prior convictions were for infractions, the law judge recited in detail the evidence and respondent’s testimony and ultimately stated he did “not find [respondent] to be credible. His testimony has been vague, evasive, nonresponsive. On a number of occasions he contradicted himself.”²⁴ The law judge found respondent committed the violations of 14 C.F.R. § 67.403(a) charged by the Administrator and affirmed the Administrator’s order of revocation.²⁵

C. Issues on Appeal

First, respondent argues the law judge erred in denying his motion to dismiss the Administrator’s complaint on the ground that a hearing on the merits before the law judge took place more than 30 days after respondent appealed the Administrator’s order of revocation, contrary to 49 C.F.R. § 821.56(a). Second, respondent argues the law judge should have dismissed the Administrator’s complaint because the complaint was time-barred under either the

²² *Id.* at 158. Section 641 of Title 18 of the United States Code criminalizes theft of government property and provides for a fine or imprisonment for up to 10 years upon conviction, unless the property at issue was valued at less than \$1,000 in the aggregate, in which case the provision authorizes a fine or imprisonment for up to one year. Separately, 18 U.S.C. § 3559(a) classifies crimes punishable by imprisonment for more than one year as felonies of varying degrees and classifies crimes punishable by imprisonment for six days to one year as misdemeanors of varying degrees. An “infraction” is a crime punishable by imprisonment for five days or less.

²³ *Id.* at 236.

²⁴ Initial decision at 304.

²⁵ *Id.* at 314.

Board's stale complaint rule,²⁶ the equitable doctrine of laches, or both. Third, respondent argues, even if the law judge did not err in declining to dismiss the complaint, the Administrator failed to prove respondent intentionally falsified information in medical certificate applications. The Administrator argues the law judge committed no error and opposes respondent's arguments for reversal.²⁷

2. Decision

A. Standard of Review and Applicable Law

We review the law judge's order *de novo*²⁸ and will consider each of respondent's arguments in turn.

1. Untimely Hearing

Respondent first argues the law judge deprived him of due process by holding a hearing on the merits of his appeal after the deadline established under 49 C.F.R. § 821.56(a), which requires, in an airman's appeal of an FAA emergency order, a "hearing shall be set for a date no later than 30 days after the date on which the respondent's appeal was received and docketed." As respondent acknowledges, a hearing in this case initially was scheduled for October 2-3, 2013—within the rule's 30-day limit—but was postponed to October 22-23, 2013, due to a lapse in Federal appropriations and resulting government shutdown from October 1-16, which

²⁶ 49 C.F.R. § 821.33.

²⁷ Respondent moved on November 12, 2013, to exclude the Administrator's reply brief on the basis the brief was untimely under 49 C.F.R. § 821.57(b). We hereby deny respondent's motion and note the Administrator's delay in filing a reply brief in no respect delayed the Board's expedited disposition of this appeal.

²⁸ Administrator v. Dustman, NTSB Order No. EA-5657 at 6 (2013) (citing Administrator v. Smith, NTSB Order No. EA-5646 at 8 (2013), Administrator v. Frohmuth and Dworak, NTSB Order No. EA-3816 at 2 n.5 (1993); Administrator v. Wolf, NTSB Order No. EA-3450 (1991); Administrator v. Schneider, 1 N.T.S.B. 1550 (1972)).

precluded the Board's Office of Administrative Law Judges from undertaking any work in this case and others.²⁹

The time limit under section 821.56(a), like the statutory requirement that the Board must decide an emergency appeal within 60 days,³⁰ does not operate to deprive the Board of jurisdiction to render a decision on the merits, even if the decision would be technically untimely.³¹ Respondent cites no authority supporting a conclusion otherwise. In view of the extraordinary circumstances that required the law judge to postpone the hearing, and the lack of any persuasive authority that the time limit in section 821.56(a) creates a jurisdictional bar, we find no basis for reversal.

2. Stale Complaint Rule and Doctrine of Laches

Respondent next argues the law judge erred in denying his motion to dismiss the Administrator's complaint under either the Board's stale complaint rule or the common law doctrine of laches.

i. Stale Complaint Rule

The stale complaint rule provides for dismissal of a complaint that "states allegations of offenses which occurred more than 6 months prior to the Administrator's advising the respondent as to reasons for proposed [enforcement] action," with an exception: "where the complaint alleges lack of qualification of the respondent, the law judge shall first determine whether an issue of lack of qualification would be presented if all of the allegations, stale and

²⁹ See 31 U.S.C. § 1341(a)(1) (prohibiting government expenditure of funds in excess, or in absence, of appropriation).

³⁰ 49 U.S.C. § 44709(e)(4).

³¹ See generally *Grant v. Nat'l Transp. Safety Bd.*, 959 F.2d 1483, 1486 (9th Cir. 1992) (explaining "the NTSB retains the power to decide the case on the merits" despite failure to comply with statutory 60-day time limit for adjudicating emergency appeal).

timely, are assumed to be true. If so, the law judge shall deny the respondent's motion" to dismiss the complaint.³²

The Federal Aviation Regulations prohibit intentional falsification of information on a medical certificate application and provide for suspension or revocation of all certificates held by an airman who has intentionally falsified information.³³ We recently explained the Board will carefully scrutinize a complaint to determine whether the complaint, with "specificity [that] must be apparent on [its] face," permits "the law judge to conclude that respondent lacks the qualification necessary to hold a certificate, when assuming the truth of the allegations," for purposes of the stale complaint rule.³⁴

Respondent cites Administrator v. Stewart for the proposition the Board will not permit the Administrator to pursue a stale allegation of even lack of qualification under certain circumstances.³⁵ Those circumstances are not present in this case. Here, the Administrator's complaint alleged respondent intentionally falsified his response to question 18.w. on 13 separate medical certificate applications up to October 31, 2012, inclusive, less than two weeks before respondent received the first LOI and some 10 months before the filing of the complaint. In factual allegations spanning more than nine pages, the complaint detailed each specific instance in which respondent allegedly falsified information. The law judge properly determined the

³² 49 C.F.R. § 821.33.

³³ 14 C.F.R. § 67.403(a)(1), (b).

³⁴ Administrator v. Ducote, NTSB Order No. EA-5664 at 22 (2013), stayed pending appeal, NTSB Order No. EA-5670; see Administrator v. Armstrong, NTSB Order No. EA-5629 (2012), pet. for recon. denied, NTSB Order No. EA-5660 (2013).

³⁵ NTSB Order No. EA-4479 (1996) (finding stale complaint when more than 17 years had lapsed between alleged violations and emergency order).

complaint alleged a lack of qualification, assuming the truth of the allegations for purposes of the stale complaint rule, and therefore was not subject to the rule's six-month limitation.

ii. *Doctrine of Laches*

Respondent argues, in the alternative, the common law doctrine of laches bars the Administrator's action in this case. A party seeking to invoke the doctrine as an equitable defense bears the burden of proving "(1) [a] lack of diligence by the party against whom the defense is asserted, and (2) prejudice to the party asserting the defense."³⁶ Urging the Board to apply the laches defense in this case, respondent cites Administrator v. Tinlin and White, in which the Administrator discovered violations of the Federal Aviation Regulations and then waited three years, with no clear justification, before bringing an enforcement action.³⁷ This case does not present such a lack of diligence on the Administrator's part. Mr. Phillips, the FAA investigator, testified he attempted in good faith to notify respondent of the basis for his investigation in July 2012—the same month he discovered respondent's potential violations.³⁸ Mr. Phillips did not wait to obtain court records confirming respondent's criminal history—those records would arrive around August 23, 2012³⁹—but rather immediately sent an initial LOI to respondent on July 25, 2012, although that letter was returned as "unclaimed."⁴⁰ After Mr.

³⁶ Manin v. Nat'l Transp. Safety Bd., 627 F.3d 1239, 1241 (D.C. Cir. 2011) (citing Pro-Football, Inc. v. Harjo, 415 F.3d 44, 47 (D.C. Cir. 2005)).

³⁷ NTSB Order No. EA-5658 at 10 (2013) (applying laches defense based on record evidence of Administrator's largely-unexplained three-year delay between discovery of violations and complaint, with possibility, based on FAA counsel's comments, that "other [legal] actions delayed the Administrator's pursuit of the cases against [r]espondents").

³⁸ Tr. at 140-41.

³⁹ Id. at 136-37.

⁴⁰ Exh. A-22.

Phillips obtained respondent's correct address from a form respondent subsequently provided to the FAA, Mr. Phillips timely resent an LOI to respondent on November 19, 2012.⁴¹ The record further reflects, from November 19, 2012, until issuance of the Administrator's emergency order, respondent was on ample notice the investigation was ongoing; he knew of the allegations against him; and he vigorously defended the Administrator's allegations in substantive correspondence with Mr. Phillips and with counsel for the Administrator.⁴² Therefore, we find no evidence of a lack of diligence in this case sufficient to support application of the laches defense.⁴³

3. Intentional Falsification

Finally, respondent argues the law judge erred in finding he intentionally falsified information on his medical certificate applications. To prevail on an intentional falsification claim, "the Administrator must prove the respondent (1) made a false representation, (2) in reference to a material fact, and (3) had knowledge of its falsity."⁴⁴ Respondent focuses on appeal on the third element: the crux of his argument is his "contention that he answered [question 18.w.] correctly because he believed his convictions were for infractions."⁴⁵

⁴¹ Tr. at 142; see Exh. A-23.

⁴² See Exhs. A-24 through A-26.

⁴³ Because we find no lack of diligence on the part of the Administrator in this case, we need not analyze evidence to consider whether respondent met the second prong of the laches defense – namely, whether or not respondent suffered prejudice.

⁴⁴ Administrator v. Rigues, NTSB Order No. EA-5666 at 14 (2013) (citing Hart v. McLucas, 535 F.2d 516, 520 (9th Cir. 1976)); accord Dillmon v. Nat'l Transp. Safety Bd., 588 F.3d 1085 (D.C. Cir. 2009).

⁴⁵ Appeal Br. at 6.

In a case in which an airman alleges he or she misunderstood a question on an FAA form, the Board “considers the airman’s subjective interpretation of the meaning of a question to be relevant” to the question of whether an airman had knowledge of the falsity of a representation to the FAA.⁴⁶ A finding regarding an airman’s subjective understanding of a question will be predicated in most cases on a finding regarding the airman’s credibility.⁴⁷ We defer to a law judge’s credibility findings unless those findings are arbitrary and capricious.⁴⁸ In appropriate cases, a law judge may rely on circumstantial evidence in making a finding regarding an airman’s knowledge of the falsity of a statement.⁴⁹ The law judge relied on these rules in his oral initial decision at the conclusion of the hearing:

The case essentially turns on whether I believe [respondent’s] representations that he subjectively believed that his three convictions were infractions and not misdemeanors when he answered question 18(w). If I believe that he did believe his convictions were for infractions when he answered question 18(w), I cannot find that he made a false representation with knowledge of falsity of that fact.⁵⁰

The dispositive issue in this case is not whether respondent misunderstood question 18.w.⁵¹ Rather, the issue here is whether respondent knew his prior convictions were for misdemeanors or felonies. As respondent’s counsel stated during closing argument,

⁴⁶ Dillmon v. Nat’l Transp. Safety Bd., 588 F.3d 1085, 1094 (D.C. Cir. 2009).

⁴⁷ See Rigues, NTSB Order No. EA-5666 at 17.

⁴⁸ Administrator v. Porco, NTSB Order No. EA-5591 at 13 (2011), aff’d, 472 Fed.Appx. 2 (D.C. Cir. 2012); Administrator v. Dillmon, NTSB Order No. EA-5528 (2010) (hereinafter “Dillmon II”).

⁴⁹ See Singleton v. Babbitt, 588 F.3d 1078, 1083 (D.C. Cir. 2009) (“That a pilot had the requisite subjective understanding will often be apparent from circumstantial evidence.”); Dillmon II, NTSB Order No. EA-5528 at 14.

⁵⁰ Initial decision at 300.

⁵¹ Cf. Dillmon II, NTSB Order No. 5528 at 11 (explaining respondent believed “the question only required him to report a conviction that involved an offense related to drugs or alcohol”).

“[respondent] was not confused by the question itself. . . . He understood what they were asking [;] he just did not believe that he fit that category because . . . he believed that he had an infraction, not a misdemeanor or a felony.”⁵² Respondent testified he believed his criminal convictions were for “infraction[s]” rather than the “misdemeanors or felonies” referenced on the form.⁵³

The record discloses the convictions were not, in fact, for “infractions.” Respondent was convicted in 1998 on multiple counts of theft of government property under 18 U.S.C. § 641; his convictions as to these counts were at best misdemeanor convictions and could, under certain circumstances, have been felony convictions.⁵⁴ Respondent was ordered to pay restitution totaling \$6,853.70 and received two concurrent two-year sentences of probation.⁵⁵ Furthermore, respondent was convicted in 1992 for negotiating a worthless instrument, a misdemeanor under state law.⁵⁶ Respondent provides no argument on appeal to refute the law judge’s determination the offenses constituted misdemeanors, at a minimum.

The law judge made detailed credibility findings in accordance with relevant precedent and rejected respondent’s testimony that the convictions were not for misdemeanors or felonies. Six pages of the hearing transcript are consumed entirely by the law judge’s discussion of respondent’s testimony and evaluation of respondent’s credibility. After reciting respondent’s testimony and other evidence, the law judge stated he gave “greater weight” to “the certified

⁵² Tr. at 264.

⁵³ See tr. at 158 (respondent’s testimony that “I still believe today that I answered it correctly. That I answered a no for the reason that it was an infraction [sic] . . .”).

⁵⁴ 18 U.S.C. §§ 641, 3559(a).

⁵⁵ See Exhs. A-15, A-16.

⁵⁶ Ala. Code § 13A-9-13.1(c).

document of [respondent's] arrest and conviction" than to respondent's "uncorroborated testimony."⁵⁷ The law judge concluded respondent's testimony was "vague, evasive, nonresponsive" and said he "[could] not believe a man of [respondent's] intelligence and legal education would believe that his convictions were not misdemeanors but instead merely infractions that were akin to spitting on the sidewalk or a speeding ticket."⁵⁸ In view of the specificity and detail of the law judge's exhaustive credibility findings, with ample factual support in the record, we find no basis to disturb those findings. Beyond respondent's uncorroborated testimony, which the law judge found not credible, respondent offered no further evidence with respect to his understanding of question 18.w. or the nature of his prior convictions. Likewise, the law judge's finding respondent intentionally falsified his answer to question 18.w. is supported by sufficient record evidence.⁵⁹

Therefore, we affirm the law judge's finding the Administrator met his burden of proof as to the three-prong test for intentional falsification under Hart v. McLucas.⁶⁰

⁵⁷ Initial decision at 299.

⁵⁸ Id. at 301-02, 304.

⁵⁹ See Singleton, 588 F.3d at 1083 ("That a pilot had the requisite subjective understanding will often be apparent from circumstantial evidence.").

⁶⁰ Parenthetically, to the extent respondent argues in his brief the law judge erred in questioning him when he testified as a witness, we find no abuse of discretion in the law judge's questioning. Federal Rule of Evidence 614(b) permits a judge to examine witnesses. To the extent respondent raises additional issues in his appeal brief, we find no reversible error among respondent's various arguments.

ACCORDINGLY, IT IS ORDERED THAT:

1. Respondent's appeal is denied;
2. The law judge's oral initial decision is affirmed; and
3. The Administrator's emergency revocation of respondent's airman certificates and airman medical certificate is affirmed.

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

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

* * * * *

In the matter of: *

MICHAEL P. HUERTA, *

ADMINISTRATOR, *

Federal Aviation Administration, *

Complainant, *

v. * Docket No.: SE-19559

* JUDGE MONTAÑO

MICHAEL JOSEPH CARPENTER, *

Respondent. *

* * * * *

National Labor Relations Board
1130 22nd Street South
Ridge Park Place
Suite 3400
Birmingham, Alabama

Wednesday,
October 23, 2013

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

BEFORE: ALFONSO J. MONTAÑO
Chief Administrative Law Judge

APPEARANCES:

On behalf of the Administrator:

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On behalf of the Respondent:

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10 ORAL INITIAL DECISION AND ORDER

11 ADMINISTRATIVE LAW JUDGE MONTAÑO: All right. This has
12 been a proceeding under the provisions of 49 USC Section 44709,
13 formerly section 609 of the Federal Aviation Act, and the
14 provisions and Rules of Practice in Air Safety Proceedings of the
15 National Transportation Safety Board and the sections pertaining
16 to emergency proceedings instituted by the Administrator of the
17 Federal Aviation Administration.

18 Michael Joseph Carpenter, the Respondent, appealed the
19 Administrator's Emergency Order of Revocation dated August 27,
20 2013. The emergency order was filed as the Administrator's
21 complaint in accordance with Sections 821.54 to .57 of the Board's
22 Rules of Practice on September 5th, 2013.

23 The Administrator alleges the Respondent violated
24 67.403(a)(1), of the Federal Aviation Regulations, which states
25 that no person may make or cause to be made a fraudulent or

1 intentionally false statement on any application for a medical
2 certificate or on a request for any authorization for special
3 issuance of medical certificate or statement demonstrated by
4 ability.

5 The Administrator alleges that the Respondent made
6 intentionally false statements on his application for his medical
7 certificates in 13 medical applications filed from 2001 to 2012.

8 The Administrator also alleges that Respondent violated
9 Section 67.403(c), which provides for suspension or revocation of
10 a medical certificate on which an incorrect statement has been
11 entered on an application for a medical certificate upon which the
12 FAA relied. And I misstated. The Administrator in the
13 alternative alleges that the Respondent violated 67.403(c).

14 The Respondent filed an answer to the complaint and
15 raised two affirmative defenses: stale complaint and the doctrine
16 of laches. I have discussed the stale complaint at the beginning
17 of this session. I also discussed the doctrine of laches, which I
18 will further expound on in this decision.

19 The Respondent had filed a motion to dismiss based on
20 the doctrine of laches and based on the contention that the Office
21 of Administrative Law Judges had not conducted an emergency case
22 hearing within 30 days in this emergency case. The scheduled
23 hearing was not conducted due to the government shutdown by
24 Congress. I denied that portion of the motion relative to the
25 failure to conduct a hearing within 30 days and made be a part of

1 the record at the beginning of this hearing. At the conclusion of
2 the hearing Respondent requested a ruling on the motion to dismiss
3 based on its laches affirmative defense, which I denied for the
4 reasons I articulated on the record. I will again also touch on
5 the basis for denying that motion.

6 This matter has been heard by me as an Administrative
7 Law Judge for the National Transportation Safety Board, and as
8 required by the regulations I have to issue an oral initial
9 decision in this type of a case.

10 Pursuant to notice this matter came on for trial on
11 October 22nd and 23rd of 2013, in Birmingham Alabama. The
12 Administrator was represented by his staff counsel, William P.
13 Vines and Ryan Patanaphan, Esquire of the Federal Aviation
14 Administration. Respondent is represented by Mr. Daniel E. Boone,
15 Esquire.

16 The parties were afforded a full opportunity to offer
17 evidence, to call, examine and cross-examine witnesses and make
18 arguments in support of their respective positions. Mr. Carpenter
19 has been in the courtroom throughout the hearing. I will not
20 discuss all of the evidence in detail, but I have, however,
21 considered all of the evidence, both oral and documentary in
22 making my decision. That which I do not specifically mention is
23 viewed by me as being corroborative or as not materially affecting
24 the outcome of this decision.

25

1 this case. I will double check that and issue a correction as
2 soon as possible if necessary.

3 As far as the exhibits are concerned, the parties
4 stipulated to the admission of certain exhibits and offered others
5 during the course of the hearing. The following exhibits were
6 admitted into evidence for the Administrator: Government's
7 Exhibit A-1 through A-13, A-14, A-14(b), A-15, A-15(a) through
8 (c), A-16, A-16(a) through (b), A-17, A-18, A-19, A-19(a) through
9 (g), A-20, A-20(a) through (g), A-21, A-21(a) through A-21(r), A-
10 22, A-22(a), A-23, A-23(a) and (b), A-24, A-24(a), A-25, A-25(a),
11 A-26, A-26(a), A-27, A-28, A-28(a) through (f), A-29, A-32, and A-
12 33.

13 As to Respondent's Exhibits, Respondent's Exhibits R-1
14 through R-19, were admitted into evidence in this case.

15 The Administrator, of course, proceeded with its case
16 first since he has the burden. He presented, first, testimony of
17 Dr. Elizabeth Northrup. What I will do is I will talk about the
18 witnesses' testimony first and then I'll use that testimony to
19 talk about the issues I have to decide under the Hart v. McLucas
20 three-prong test.

21 Dr. Susan Elizabeth Northrup testified. She is the
22 regional flight surgeon. She has been employed by the FAA since
23 April of 2007. She is responsible for overseeing five FAA
24 programs, and of relevance to this case is the airman
25 certification program. She testified she reviews medical

1 applications to determine if pilots meet the standards of 14 CFR
2 Part 67. She is board certified in aerospace medicine and also
3 board certified in occupational health. Her CV was admitted as
4 part of the record.

5 She was qualified as an expert in aerospace medicine
6 without objection from the Respondent. Dr. Northrup testified to
7 the medical application process for the medical applications in
8 this case. She testified that from March 1999 to September 2008
9 the medical application form was noted as FF and was used by
10 airmen and Aviation Medical Examiners. In March of 1999 the FAA
11 FF form, Exhibit 19 through Exhibit 19(g), was replaced by the GG
12 form. The GG form has been admitted as Exhibit A-20 through A-
13 20(g).

14 The form was subsequently replaced by the computerized
15 application process known as MedExpress. The screen shots from
16 MedExpress electronic form are depicted in Exhibit 21 through
17 21(r). She testified that MedExpress was used in conjunction with
18 the GG form from approximately 2007 until the MedExpress
19 application process became mandatory on October 17th, 2012. Up
20 until that time an airman and an AME had the option of either
21 using the paper form or using MedExpress.

22 She testified that to first obtain a student pilot
23 certificate the prospective airman must undergo an examination by
24 an Aviation Medical Examiner to obtain a student pilot license and
25 a medical certification. The student will fill out and sign the

1 medical application form and submit it to the AME's office, the
2 airman medical's office. The Aviation Medical Examiner will
3 conduct a physical examination and fill out the rest of the form.

4 If the individual meets the standards, the medical
5 standards, the Aviation Medical Examiner will issue the student
6 pilot medical certificate. If the individual does not meet the
7 medical standard the AME would deny or defer the application and
8 request additional information.

9 Dr. Northrup testified that after an individual obtained
10 a private pilot certificate, the airman then applied for an airman
11 medical certificate. She testified that the airman would fill out
12 the medical certificate application under the FF and GG
13 application process. He or she would provide it to the AME. The
14 AME would conduct an airman medical examination and either issue
15 the medical certificate, deny the medical certificate, or defer
16 the medical certificate pending requested additional information.

17 Under MedExpress the airman obtains an account and
18 password online in order to fill out the medical application form.
19 He or she is issued a password which is used to access the
20 electronic form which asks essentially the same questions as the
21 written form that is being used as form GG.

22 She testified that question 18(w) remained the same in
23 all of the medical application forms the Respondent completed from
24 January 1st 2001 to October of 2012. She also testified that the
25 instructions for 18(w) remained the same on all of the

1 applications completed by the Respondent from January 2001 to
2 October 2012.

3 Dr. Northrup testified that a physician, after
4 completing an airman medical evaluation could enter comments on
5 the form or the computer-generated form in space 60 under
6 comments, which is entitled, History And Findings. Dr. Northrup
7 testified that if she had been called by an AME and was informed
8 that an applicant has answered yes to 18(w) that there was a
9 history of nontraffic convictions, (misdemeanors or felonies), she
10 would have instructed the AME to defer the application. She would
11 have instructed the AME to have the applicant provide the arrest
12 record, court documents, and a personal statement to explain the
13 event.

14 She testified if information came to her attention after
15 a medication certificate was issued she would ask for the same
16 information. She would review the documentation as to the court
17 records, the arrest records, and personal statement to determine
18 the frequency and nature of overt acts involved. Depending on
19 what she saw in the documents, she may request a psychological
20 evaluation of the airman.

21 The documentation of the court record and the arrest
22 records may indicate that the airman, in her opinion, in her
23 testimony had a mental disorder that may affect safety of flight
24 and disqualify him from obtaining a medical under the Federal
25 Aviation Regulations. If the requested information was not

1 provided by the airman regarding the arrest record, the court
2 documents, and a personal statement, she would proceed to prepare
3 the case for revocation of the medical certificate for failure to
4 provide records requested by the Federal Aviation Administration.

5 She testified that if the information relative to
6 nontraffic convictions, misdemeanors or felonies, were not
7 disclosed to the AME, the AME would issue the medical certificate.

8 On cross-examination she testified that she has been an
9 AME but is not currently performing flight physicals. When asked
10 how many airman physicals she had performed she testified that she
11 has performed thousands. She agreed that the goal of the medical
12 certificate application process is to evaluate if a pilot is safe
13 to fly and she agreed that the goal was to provide questions that
14 are appropriate without being medically too broad.

15 She testified that the questions on the form were
16 developed centrally and stated that she would hope that the
17 questions were developed to try to avoid misinterpretations. She
18 testified that the FAA wants the form to be clear. Dr. Northrup
19 testified that when she was an AME she would discuss the airman
20 history and answers the airman had provided on the medical
21 application form. She testified that any discussion conducted
22 would be recorded in block 60 of that form.

23 She agreed that if the applicant was confused by a
24 question and he or she discussed it with the AME, the AME should
25 document that discussion in block 60. Dr. Northrup was asked what

1 she would do if an applicant came to her with an arrest 18 to 21
2 years ago and had not been arrested since. She testified that as
3 an AME she would inform the applicant to answer yes to 18(w) and
4 would defer the certificate and ask for the arrest record, court
5 records, and personal statement.

6 Dr. Northrup did not agree that question 18(w) is not
7 clear. She testified she believed that question 18(w) was, in
8 fact, clear. When asked what an airman would do if he or she
9 believed the conviction was neither a misdemeanor or a felony,
10 Dr. Northrup opined that the airman should research to find out
11 what type of a conviction was in issue.

12 Dr. Northrup agreed that except for answers to question
13 18(w), the Respondent met or exceeded the qualifications to obtain
14 the medical certificate. She qualified that stating based on the
15 representation that Respondent made on the forms.

16 She testified that FAA crosschecked driving records with
17 medical applications for medical certificates but did not have
18 such a mechanism to check for medical disabilities or criminal
19 records. She testified that the FAA relied upon the veracity of
20 the applicant. In other words, the FAA relies on the truthfulness
21 of the airmen who are applying for medical certificates and airmen
22 certificates.

23 Dr. Northrup agreed that the court documents in this
24 case documenting convictions at Exhibits 14, 15, and 16 did not
25 identify the conviction as a misdemeanor or a felony. She

1 testified the documents only indicated that there was guilt on the
2 part of Mr. Carpenter.

3 Dr. Northrup was asked if an event such as a conviction
4 occurred only one time 20 years ago, would she as an AME still
5 defer the medical certificate? Dr. Northrup answered yes, it was
6 still a conviction. She testified that she would consider a one-
7 time conviction 22 years ago to be a history of a nontraffic
8 conviction because it happened in the past and it is a history.

9 Dr. Northrup testified that she would expect the
10 handwritten certification form information to be the same in
11 content as the typewritten report; however, they do not have to be
12 identical.

13 On redirect she testified the airman bears the
14 responsibility for answering the questions on the medical
15 certificate application form. The airman can provide any
16 explanation in response to questions by providing comments and
17 indicating why he or she answered a certain way. She also
18 testified that the medical application form in issue indicates a
19 subheading informing the applicant that the information requested
20 is relative "to a conviction or administrative action history, see
21 instructions on the FF forms; and arrest, convictions and/or
22 administrative action history, see instructions", on the GG form.

23 She reiterated that even if an airman discussed an issue
24 with the AME, the AME may not in certain circumstances document
25 the discussion on the medical application form. However, she

1 indicated she hoped they would.

2 That complete her testimony. The Administrator then
3 called Special Agent Charles Phillips.

4 Mr. Phillips testified he's employed by the FAA as a
5 special agent in the Law Enforcement Assistant Program. He's been
6 so employed since May of 2012. His duties include liaison between
7 law enforcement and the FAA. He also investigates airman
8 falsifications, airman records and airman aircraft registrations.

9 He conducts investigations, gathers evidence and submits
10 the findings to the FAA legal counsel for legal action. Agent
11 Phillips provided testimony about his extensive history in law
12 enforcement which began when he worked with the Anniston Sheriff's
13 Office. While he was attending college he obtained a degree in
14 criminal justice and worked with the DeKalb County Police
15 Department as a patrolman, an investigator and various other
16 positions. He also worked in the aviation unit as a helicopter
17 pilot.

18 His work in law enforcement was interrupted a number of
19 times when he was called to active duty with the military. He
20 retired from the reserves and began to work with the FAA at that
21 time. He has over 6,000 hours of flight time with military as
22 well as private flying. He holds a commercial pilot certificate
23 for multi-engine airplane and a commercial pilot certificate for a
24 helicopter.

25 Agent Phillips became familiar with the Respondent July

1 of 2012 when he was called by an agent with the U.S. Army Criminal
2 Investigation Division. That agent indicated that they were
3 conducting an investigation of Mr. Carpenter relative to
4 allegations of fraud or a falsification in duties as a contract
5 pilot at Fort Rucker, Alabama.

6 Agent Phillips testified that the person he spoke to was
7 inquiring as to whether or not Mr. Carpenter could have obtained
8 FAA airman medical certificates based on falsified military
9 records.

10 Agent Phillips testified that he began his investigation
11 but did not find any evidence that Respondent had obtained his FAA
12 certificates through representation as to his military record.
13 However, the information from the Army Criminal Investigation
14 Division indicated that there were some instances of criminal
15 prosecution of the Respondent. Agent Phillips indicated that he
16 was concerned that the criminal actions were not documented on
17 Respondent's medical applications.

18 Agent Phillips contacted the airman's branch of the FAA
19 and asked for copies of the Respondent's medical applications. He
20 found that the Respondent answered no to question 18(w) in all of
21 the medical applications beginning with his student pilot first
22 medical certificate in 2001 applications he had filed to 2012.

23 Agent Phillips requested copies of criminal records for
24 the approximate dates in question based on the information
25 obtained by the Army Criminal Investigation Division. He received

1 a case summary from Hoover, Alabama, which are certified copies.
2 The document has been admitted into evidence. That document
3 indicated that the Respondent pleaded guilty to charges of
4 negotiating a worthless instrument.

5 Agent Phillips testified he compared the identifying
6 information on the court documents with the information on
7 Respondent's application to ensure that the criminal conviction
8 related to Mr. Carpenter. He found that it did.

9 Agent Phillips obtained additional records from the
10 Federal District Court for the Northern District of Alabama which
11 disclosed two criminal convictions. Those documents have been
12 admitted as evidence as Exhibit A-15 and A-16.

13 Agent Phillips again compared the information on the
14 court documents with the information on the Respondent's medical
15 file to confirm the Respondent was the individual convicted and
16 found that Respondent had been convicted. He testified that
17 Exhibit A-15 indicated that Michael J. Carpenter pled guilty on
18 July 24th, 1998 to counts 1 through 18 of violating 18 USC 641,
19 theft of government property. Respondent was represented by
20 Counsel Guy L. Burns, Jr.

21 Agent Phillips testified that Exhibit 16 indicates that
22 the Respondent was found guilty on July 31st, 1998 of count one
23 and not guilty on count two after a trial before a Federal
24 District Court Judge. He was charged with theft of government
25 property. The Respondent was represented by Gail Dickinson.

1 Agent Phillips testified he requested the court
2 documents in mid July 2012. He also testified he prepared a
3 letter of investigation which he sent to Respondent on July 25th,
4 2012. That letter was returned as undeliverable and was also
5 marked as unclaimed. Agent Phillips subsequently obtained an
6 updated address when the Respondent applied for his July 2012
7 medical certificate.

8 Agent Phillips sent a second letter of investigation
9 which has been admitted into evidence as Exhibit A-23. A-24 is
10 the Respondent's reply to the letter of investigation. Agent
11 Phillips testified he had one telephone contact with the
12 Respondent to confirm the Respondent's current address.

13 At the completion of his investigation he put the case
14 file together relative to the medical applications from 2001 to
15 2012. He testified he reviewed the sanction guidelines to
16 determine that revocation is the appropriate remedy for the
17 falsification. He made that recommendation, forwarded the
18 investigation package with the recommendation of revocation to
19 chief counsel's office.

20 On cross-examination he testified in the past 12 years
21 that Respondent did not have an infraction or an accident. He
22 testified that he had no knowledge or any other investigation of
23 the Respondent since 2001, by the FAA. He also testified that he
24 did not believe that the Respondent had failed the check ride, or
25 a flight reevaluation since 2001.

1 Agent Phillips was shown an award by the
2 Alabama/Northwest Florida Flight Standards District Office
3 appointing Respondent as a volunteer safety counselor. Special
4 Agent Phillips agreed that the document essentially read as it was
5 identified.

6 On redirect Mr. Phillips indicated he did not know if
7 the Flight Standards District Office or the person who signed the
8 certificate was aware of Respondent's convictions. The
9 Administrator rested his case at that point.

10 The Respondent called one witness, the Respondent,
11 Michael J. Carpenter. He testified that he is an FAA-rated pilot.
12 He has a commercial certificate. He is a ground instructor. He
13 has an advanced instructor certificate and instrument
14 certification. He is a master certified flight instructor. He
15 began flying in 2001 and as a commercial pilot since 2003.

16 He testified that in 1991 he had written a check to HQ,
17 which is he testified was similar to a Home Depot or a Lowe's. He
18 testified he was later stopped for speeding and was informed that
19 there was an outstanding warrant for him. He testified, that he
20 went to Hoover put up his bond. He testified that he thought it
21 was no more than the ticket and he took care of it. He testified
22 everyone treated it that way so he just paid it and moved on.

23 He testified that subsequently he left his home as he
24 and his wife were going through a divorce. He moved out and
25 bought some furniture at the Post Exchange, the PX, and wrote some

1 checks for cash as well. He did not know that his wife had
2 cleaned out the bank accounts. Six or seven months later he
3 received a call from an investigator who inform him that there
4 were some issues with some bad checks. Respondent testified that
5 he told the investigator he should ask the Respondent's ex-wife
6 for the funds as she was the one who cleaned out the account and
7 she was the one who received the bank statements that indicated
8 that the checks were returned or found to be worthless.

9 He testified he retained counsel, legal counsel and
10 agreed to pay the fines. He said he was given 48 months to pay
11 the fines and paid them off in 2½ years. Respondent testified he
12 complied with the court order. He was advised by counsel to plead
13 guilty and he testified he believed the charges were nothing more
14 than equivalent to spitting on the sidewalk or a speeding ticket.
15 As to question 18(w) he testified he did not intentionally or
16 fraudulently answer the question. He answered no to the question
17 because he thought it was an infraction.

18 He was employed by the Maryland State Police Department
19 and had no reason to tell them he had been convicted for a crime
20 again because he believe it was a conviction for a mere
21 infraction. Mr. Carpenter testified that he was told that his
22 convictions were only an infraction.

23 He has followed up with the courts on the charges in
24 issue and has filed a motion for expungement of those records.
25 When asked by his counsel if he sustained damages because of the

1 long delay in the FAA bringing this action, Respondent testified
2 that it was an old case and he took care of it. He said he
3 obtained a first class medical even as a student pilot to ensure
4 he was safe to fly. He testified that the action brought by the
5 FAA 16 years later are relative as to questions as to his mental
6 state at that time.

7 Counsel asked Mr. Carpenter about the records from
8 Dr. Parker, one of Mr. Carpenter's Aviation Medical Examiners, and
9 the FAA had obtained written notes from the Respondent's AMEs,
10 Aviation Medical Examiners which were admitted into evidence as
11 R-18. Respondent testified that Dr. Parker did not have written
12 notes because they were destroyed recently. He testified that if
13 he had discussions with Dr. Parker about the convictions that
14 conversation would have been documented in his record. However,
15 the Respondent, I believe, testified that he would not have asked
16 Dr. Parker any questions about his convictions because he believed
17 they were just infractions.

18 Respondent then went on to identify problems that he had
19 with the records in R-18 but those concerns did not relate to
20 answers to question 18(w) nor did it relate any information any of
21 his Aviation Medical Examiners' provided to him as to how to
22 appropriately answer question 18(w).

23 Respondent testified that he never thought about the
24 answer to 18(w) until he was contacted by Agent Phillips. He
25 testified he was issued an airman medical in 2012 while this case

1 was under investigation and he testified he considers himself a
2 skillful and proficient pilot, and has flown professionally for
3 about 10 years.

4 He has four children: one with autism, one in college,
5 one in high school and one in elementary school. He is not
6 currently employed. Respondent testified he's always been
7 forthright. He has been involved in safety programs and wings
8 programs and has always tried to do what is right.

9 He testified that the FAA should have asked a better
10 question if they wanted to know the whole gamut about his
11 convictions, they should have asked for everything, not just
12 misdemeanors or felonies.

13 On cross-examination he testified he's a high school
14 graduate. He received a Bachelor of Science Degree in Business
15 Administration from the University of Maryland in 1999. He earned
16 his Ph.D. from Kensington University of Florida in 2000 in
17 computer language and artificial intelligence. He testified he
18 had to do a lot of research during his college and Ph.D. programs.
19 He attended law school for 1 year and is on leave of absence from
20 the Taft Law School of Santa Ana, California. He has taken torts,
21 criminal law, legal writing, and contracts. He said that he
22 received good grades in law school grades in the 90's.

23 As to the charges of theft of government property
24 identified in Exhibit 16, on July 1st, 1998, he testified that
25 there was a one-half day hearing before a federal Judge in which

1 he was found guilty on count 2, a violation 18 USC 641, theft of
2 government property. He was represented by Gail Dickinson. He
3 testified that Ms. Dickinson told him at the conclusion of the
4 hearing that the conviction was no more than or was equivalent to
5 a violation of spitting on the sidewalk. He testified that after
6 that he served probation and he thought that the whole issue would
7 be exonerated, as he put it, from the record.

8 He testified there was no fine but agreed that there was
9 an assessment of \$450. He was sentenced to probation for 48
10 months. When asked if he was still on probation when he applied
11 for his first medical, Respondent indicated his probation was
12 terminated earlier after he paid the restitution. However, there
13 is not documentation to prove that point.

14 Respondent pointed out that he thought it was an
15 infraction by the documentation on page 2 of Exhibit 16, which
16 indicates what he terms as an "I" after the phrase, Criminal
17 History Category. He does not remember if he received the
18 document after the federal hearing in which he was convicted or if
19 he obtained it later.

20 He testified he may have concluded that the violation
21 was an infraction at the time of the hearing when he was convicted
22 of theft of government property. He testified he could not
23 recollect if he did any research to find out if the charges were
24 actually misdemeanors or felonies or infractions. He testified
25 that he would be surprised if his conviction in 1992 was defined

1 under Alabama law as a Class A misdemeanor.

2 He testified as to his airman medical certificates and
3 agreed he had passed both written practical tests for his
4 commercial pilot rating, his helicopter certificate, his CFI
5 ratings. He also testified that he certainly would follow up with
6 instructions from air traffic control if he didn't understand
7 those instructions.

8 He testified he is not confused question 18(w). He
9 testified he read the question on each of the medical applications
10 but he did not read the instructions each time he filled out the
11 form.

12 Mr. Carpenter testified under oath that he was convicted
13 in 1992 in Hoover County Municipal Court, Exhibit 14. He also
14 testified he was convicted of theft of government property on July
15 31st, 1998 and pled guilty to 18 counts of theft of government
16 property.

17 He was asked on cross-examination as to whether the
18 letter "I" he referenced in the court documents as meaning
19 infractions related not to the type of offense but as to his
20 criminal history category. Mr. Carpenter testified he did not
21 really consider that interpretation until today. He testified
22 that he was surprised that the federal sentencing guidelines
23 indicated what he considered was an I was, in fact, according to
24 the Administrator Roman Numeral I. That Roman Numeral I relates
25 to prior convictions and not the class of charge, whether it's a

1 misdemeanor, felony or an incident.

2 Respondent did not testify that his legal counsel
3 informed him that the specific sentence on Exhibit 16 indicated
4 that the "I" was for an infraction.

5 On redirect he testified he did not claim the first
6 letter of investigation sent to him because he was working in the
7 Gulf and was not available. He reiterated he always sought first
8 class medicals to ensure he was safe to fly. He read from the
9 Pilot's Bill of Rights as to the purpose and the goals of the
10 medical application.

11 On cross he indicated he had not notified the FAA of his
12 convictions identified in Exhibit 14, 15, and 16. On redirect he
13 testified that to this day he does not believe his convictions
14 were felonies or misdemeanors. He relied on advice of counsel in
15 believing that the convictions were infractions.

16 At the conclusion of questioning of Mr. Carpenter, I
17 asked him some questions. My role as Administrative Law Judge is
18 to make a determination as to essentially what Mr. Carpenter was
19 thinking at time he filled out his medical applications and the
20 regulations allow me to ask questions.

21 To clarify, in response to my question as to whether he
22 had ever been convicted, he testified that he had been convicted
23 in 1988 for a crime of trespassing. He testified he had that
24 record expunged. He testified that Exhibit A-14 was incorrect in
25 that it stated he was arrested on October 13, 2013 by arresting

1 Officer L. Morris. He testified he was not arrested but was told
2 during a traffic stop that he had an outstanding warrant. He
3 could not recall if it was an outstanding warrant for his arrest
4 or some other form of warrant. He testified he had no independent
5 knowledge if he had been arrested at that time.

6 He testified the information was incorrect on Exhibit 14
7 and he had not been arrested. Mr. Carpenter testified that he was
8 not represented by counsel in that action and that he had pled
9 guilty. He testified that no one told him that the crime he pled
10 guilty to in Hoover County was an infraction. He testified he
11 concluded that on his own. He testified he thought the conviction
12 was the equivalent of a ticket.

13 As to his federal court conviction in 1998, when I asked
14 him if Attorney Guy L. Burns specifically told him that his guilty
15 pleas on July 24th, 1988 were for infractions, first he testified
16 Mr. Burns did not tell him that. He then changed his testimony to
17 say, "I want to say that he did tell me that it was an
18 infraction," and that is in quotes. Then he again changed his
19 testimony and testified that he believed Mr. Burns told him his
20 conviction was an infraction, but he also testified he was not 100
21 percent sure.

22 He testified in response to my question that Gail
23 Dickinson represented him during the trial, did not tell him that
24 the conviction was an infraction. However, Respondent testified
25 that she told him the conviction was, again, the equivalent of

1 spitting on the sidewalk.

2 I asked Respondent if he contacted Attorney Gail
3 Dickinson to testify to corroborate his testimony. He testified
4 that he did not contact Ms. Dickinson. He also testified that he
5 did not contact Attorney Guy Burns to corroborate his testimony
6 that Mr. Burns told him his convictions were for infractions. He
7 said he had discussed contacting Attorneys Gail Dickinson and Guy
8 Burns with his counsel during the hearing these last two days but
9 he felt it was too late.

10 That concluded my questioning of Mr. Carpenter.

11 I will now discuss the testimony and how it relates to
12 issues I must decide. The Board has adhered to a three-prong
13 standard to prove a falsification claim. The Administrator must
14 prove by a preponderance of reliable, probative and credible
15 evidence that a pilot made the false representation; two, in
16 reference to a material fact; and three, with knowledge of the
17 falsity of that fact. The three-part test derives from Hart v.
18 McLucas. The case was decided and is reported at 535 F.2d 516 and
19 519. That's a 9th Circuit case and that's a 1976 case.

20 The Board has also held that a statement is false
21 concerning material fact under the standard if the alleged false
22 fact could influence the Administrator's decision concerning the
23 issuance of a certificate or a compliance with the regulations.
24 The Board has also held that a three-prong test can be proven by
25 circumstantial evidence.

1 Applying the facts and evidence to this case to the
2 three-prong standard, the first issue I must address is whether or
3 not there was a false representation by Mr. Carpenter in his
4 response to 18(w) in the 13 medical applications he filed from
5 2001 to 2013.

6 The Administrator argues that the Respondent should have
7 answered yes to question 18(w) in each of the 13 applications for
8 medical certificates. The Administrator argues question 18(w)
9 asks the airman if he had a history of nontraffic convictions,
10 misdemeanors or felonies. The Administrator argues that the court
11 document at A-14 indicate the Respondent was convicted of
12 negotiating a worthless instrument in violation of Alabama Code
13 Section 13A-9-13.1, which is a Class A misdemeanor. The
14 Administrator further argues the Respondent was convicted of
15 violating 18 USC 641, theft of government property, on July 24th,
16 and July 31st, 1998.

17 The Administrator contends that the Respondent pled
18 guilty to 18 counts of theft of government property on July 24th,
19 1998. Respondent also went to trial before a Federal Judge and
20 was found guilty on one count of theft of government property and
21 acquitted on another count on July 31st, 1998. The Administrator
22 argues that these federal violations are misdemeanors punishable
23 by up to a period of one year in jail. The Administrator also
24 argues that certainly the probation of 24 months is supportive of
25 the Administrator's contention that these convictions were indeed

1 misdemeanors.

2 The Respondent maintains that the conviction in Hoover
3 County in 1992 was for an infraction and not a misdemeanor or a
4 felony. Respondent testified he was not told by anyone that the
5 offense to which he pled was an infraction. He testified he came
6 to that conclusion on his own. Respondent also contends that the
7 criminal convictions of the federal crimes were also infractions
8 and not misdemeanors. Respondent presents no documentary evidence
9 to support his assertion that any of his three convictions were,
10 in fact, infractions.

11 He testified that his counsel and the action in which he
12 pled to 18 counts of theft of government property told him it was
13 an infraction. But, again, Respondent testified he's not 100
14 percent sure that his counsel actually told him that that the
15 criminal violations were merely infractions.

16 In weighing the evidence and the testimony before me, I
17 find that the Administrator has proven by a preponderance of the
18 evidence that the Respondent was convicted of a misdemeanor of
19 negotiating a worthless instrument in 1992 in violation of Alabama
20 law. The Administrator has also proven by a preponderance of the
21 evidence that the Respondent's conviction for federal crimes,
22 theft of government property on July 24th, 1998 and July 31, 1998
23 are misdemeanors. Those issues have been proven by a
24 preponderance of the evidence.

25 I do not find the Respondent's uncorroborated testimony

1 to be credible nor does it prove by a preponderance of evidence
2 that his convictions were for infractions of the law. Thus, I
3 find that the Respondent has at a minimum made incorrect
4 statements in his 13 applications for his medical certificates. I
5 further find that the Respondent has made false statements in the
6 13 applications for medical certificates from 2001 to 2012 and I
7 will discuss further when I discuss the third element of the Hart
8 v. McLucas test.

9 The second question that I must address is whether the
10 false representation was material. As noted, the Board has held
11 that a statement is false concerning a material fact if the
12 alleged fact could influence the Administrator's decision.
13 Respondent does not dispute that all of the questions on the
14 application for medical certificate are material.

15 However, I also note that Dr. Northrup also testified
16 that an AME, Aviation Medical Examiners rely on the veracity of
17 the airman to be truthful and to provide complete information so
18 that an informed decision can be made as to the issuance of a
19 medical certificate. She further testified that if she was
20 presented with facts that indicated an applicant answered yes to
21 question 18(w), she as an AME would have deferred the medical
22 certificate and requested additional court documentation, arrest
23 record, and a personal statement. She testified she would
24 instruct an AME who presented her with this scenario to defer the
25 medical certificate and obtain additional information. I found

1 Dr. Northrup's testimony to be credible and persuasive. Clearly
2 not reporting three convictions could influence the
3 Administrator's decision to issue a medical certificate to the
4 Respondent.

5 Here, in fact, it did influence the Administrator's
6 decision to issue 13 medical certificates from 2001 to 2013. Thus
7 I find the Administrator has proven by a preponderance of evidence
8 that the Respondent's false representations were material.

9 I now turn to the issue of whether the Respondent made a
10 false representation with knowledge of the falsity of that fact.
11 The case essentially turns on whether I believe Mr. Carpenter's
12 representations that he subjectively believed that his three
13 convictions were infractions and not misdemeanors when he answered
14 question 18(w). If I believe that he did believe his convictions
15 were for infractions when he answered question 18(w), I cannot
16 find that he made a false representation with knowledge of falsity
17 of that fact.

18 Respondent testified he believed that his 1992
19 conviction for negotiating a worthless instrument in violation of
20 Alabama law was not a misdemeanor but was an infraction. He
21 testified that no one told him the conviction was for an
22 infraction. He testified he came to that conclusion on his own.
23 He also testified that the record of that conviction at Exhibit A-
24 14 was incorrect because he had no independent knowledge of being
25 arrested. The record indicates the Respondent was arrested on

1 October 13, 1992 by Officer L. Morris. He was committed to jail
2 the same day and released on the same day after posting bond.
3 Respondent simply states that the document is incorrect.

4 I do not find Respondent's testimony relative to this
5 conviction to be credible. I give the certified document of his
6 arrest and conviction greater weight over the Respondent's
7 uncorroborated testimony. He provides no evidence that his
8 conviction of negotiating a worthless instrument was an infraction
9 other than his own testimony that he decided the conviction was an
10 infraction, nor do I believe his testimony that he was not
11 arrested.

12 Respondent also testified that he believed his federal
13 conviction on July 24th and July 31st, 1998, were infractions and
14 not misdemeanors or felonies. He testified on direct examination
15 that he relied on advice of counsel in the federal actions who
16 told him that the conviction for theft of government property were
17 mere infractions.

18 He testified that Gail Dickinson, his attorney told him
19 that the conviction at trial on one count was equivalent to
20 spitting on the sidewalk. He also specifically testified that
21 Ms. Dickinson did not specifically tell him that the criminal
22 conviction was an infraction.

23 Again, when Respondent was asked about his other
24 attorney, Mr. Guy Burns, as to whether or not that attorney
25 informed Respondent that his conviction was indeed an infraction

1 and not a misdemeanor, first, Respondent again said no that Mr.
2 Burns did not tell him that, then he changed his testimony to say,
3 I want to say he did tell me that. Then he changed his testimony
4 to indicate that Mr. Burns indeed told him that the conviction was
5 for an infraction or he believed Mr. Burns told him that the
6 convictions were for an infractions, however, he was not 100
7 percent sure.

8 He testified he did not even try to contact his
9 attorneys, Ms. Dickinson or Mr. Burns, to corroborate his
10 testimony. I find his testimony as to what he asserts Mr. Burns
11 to have told him as wholly incredible. I do not find him credible
12 in any way. Likewise, I do not find it credible that
13 Ms. Dickinson likened a federal case before a federal judge
14 involving 18 counts of theft of government property and another
15 trial before a federal Judge in which he was found guilty after
16 trial to be akin to spitting on the sidewalk.

17 Respondent's counsel argued in closing argument the
18 Respondent had discussed his criminal conviction, how to report
19 it, with one of his Aviation Medical Examiners but those records
20 were not available because those records were recently destroyed.
21 However, as I've indicated, I recall Respondent's testimony to be
22 that he would not have discussed the convictions with this AME
23 because he believed the convictions were infractions and not
24 misdemeanors. Furthermore, Respondent did not specifically allege
25 that any specific AME told him how to answer, to answer no to

1 question 18(w).

2 Question 18(w) asked the applicant to check yes or no
3 box if there is a history of nontraffic conviction or convictions,
4 misdemeanors or felonies. The Board has stated that question
5 18(w) is short and uncomplicated. In the case that is noted in
6 the footnote 11 in the Administrator v. Boardman case, in the case
7 of Administrator v. Martinez the Board affirmed Administrative Law
8 Judge Geraghty's granting of a motion for summary judgment and the
9 Board stated that question 18(w) cannot be found to be confusing.
10 Again, Respondent indicated he did not find it confusing.

11 In Administrator v. Sue the Board has held that the
12 placement under the heading of Medical History, the question about
13 nontraffic and other convictions, is not confusing to a person of
14 ordinary intelligence. Thus a person of ordinary intelligence
15 should be able to understand question 18(w).

16 Accordingly, in Dillmon v. NTSB, 588 F.3d, page 1085,
17 the DC Circuit held that an airman's subjective interpretation is
18 relevant as to whether he offered an intentionally false
19 statement. And that's what this case essentially is all about,
20 what was Mr. Carpenter thinking. He said he understood question
21 18(w). I have listened to Mr. Carpenter's testimony about his
22 subjective interpretation of his understanding of his misdemeanor
23 convictions and I have weighed his testimony and what evidence he
24 did provide to support his case, I do not find Mr. Carpenter to be
25 credible. His testimony has been vague, evasive, nonresponsive.

1 On a number of occasions he contradicted himself.

2 Mr. Carpenter has a Bachelor of Science degree in
3 Business Administration, a Ph.D. in computer language and
4 artificial intelligence. He has attended a year of law school.
5 By his own account he is an accomplished aviator. I cannot
6 believe a man of his intelligence and legal education would
7 believe that his convictions were not misdemeanors but instead
8 merely infractions that were akin to spitting on the sidewalk or a
9 speeding ticket.

10 I find that the Administrator has proven by a
11 preponderance of the evidence that Mr. Carpenter made false
12 representations on question 18(w) on all of the medical
13 applications in issue in this case. I find that the Administrator
14 has proven by a preponderance of the evidence that those false
15 representations were material. Further, I find the Administrator
16 has proven by a preponderance of the evidence that at the time
17 Mr. Carpenter made each of those false representations he made
18 them with knowledge of the falsity of those facts.

19 Having discussed the evidence and testimony in this case
20 I now make specific findings of fact and conclusions of law and to
21 do that I am basically going to read from the Administrator's
22 complaint as to my findings. There have been agreements, but I'm
23 going to go through it all just to make sure that I cover
24 everything.

25 I find that the Administrator has proven the allegations

1 in paragraphs 1, 2, 3, and 4 of his complaint. He has proven by
2 preponderance of evidence the allegations in paragraphs 5 and
3 paragraph 6.

4 I find that the Administrator has proven the allegations
5 in paragraph 7, that on or about October 31st, 2012, you applied
6 for and were issued a first class airman medical certificate. I
7 find that the Administrator has proven by a preponderance of
8 evidence the subparts to that; allegations (a) through (g).

9 I find the Administrator has proven his allegations by a
10 preponderance of evidence as to allegation number 8, that on or
11 about July 18th, 2011, you applied for and were issued a first
12 class airman medical certificate. I find the Administrator has
13 proven all of the subparts (a) through (g) of that allegation.

14 The last part of that allegation, (g), is the same as
15 allegation 7, that in the 2011 application you certified in item
16 20 that all statements and answers you provided on the application
17 were complete and true knowing that your answer to 18(w) was
18 incomplete, fraudulent or false. I found that that statement by
19 Mr. Carpenter was false.

20 I find the same as to 8(g) that on your 2012 application
21 you certified in item 20 that all statements and answers you
22 provided on the application were complete and true knowing that
23 your answer to item 18(w) was incomplete, fraudulent or false. I
24 have found that Mr. Carpenter has made false statements as to
25 18(w).

1 As to allegations in paragraph 9, I find that the
2 Administrator has proven by a preponderance of evidence his
3 allegations as to that on May 26th, 2010 Respondent applied for
4 and was issued a first class airman medical certificate and has
5 proven (a) through (f). Again, (g), your answers to 18(w) on your
6 2010 application was -- you certified in item 20 that all
7 statements and answers you provided in the application were
8 complete and true knowing that the answers to item 18(w) was
9 incomplete, fraudulent or false. Again, I find that Mr. Carpenter
10 made false statements.

11 The same for paragraph 10, the allegations. I find that
12 the Administrator has proven those allegations, paragraph 10(a)
13 through (g). I find the Administrator has proven the allegations
14 in paragraph 11 and subparts (a) through (g) as well by a
15 preponderance of evidence.

16 I find the Administrator has proven his allegations as
17 to paragraph 12 by a preponderance of evidence as to his
18 allegations in that paragraph including (a) through (g). I find
19 the Administrator has proven his allegations as to paragraph 13,
20 (a) through (g).

21 I find the Administrator has proven by a preponderance
22 of evidence the allegations in paragraph 14, (a) through (g). I
23 also find the Administrator has proven by a preponderance of
24 evidence the allegations in paragraph 15, (a) through (g); proven
25 by a preponderance of evidence the allegations in paragraph 16,

1 (a) through (g); has proven the allegations in paragraph 17, (a)
2 through (g); paragraph 18 (a) through (g); and paragraph 19, (a)
3 through (g).

4 I find that the Administrator has proven by a
5 preponderance of evidence all of those allegations, but
6 specifically I find in each one of those alleged paragraphs that
7 Mr. Carpenter made a false statement on his answer to question
8 18(w).

9 Having made these findings of fact and conclusions of
10 law, I now turn to the Respondent's affirmative defenses. I have
11 discussed the Respondent's affirmative defenses and found that the
12 Respondent has not proven his affirmative defense by a
13 preponderance of evidence as to the stale complaint.

14 Respondent also had raised an affirmative defense as to
15 the doctrine of laches. I have made an initial ruling in the
16 motion to dismiss during closing arguments in this case, but I do
17 want to touch upon the doctrine of laches to say this, that I do
18 not believe that the Respondent has proven by a preponderance of
19 evidence that his affirmative defense that the order of revocation
20 and complaint in this case are barred by the doctrine of laches.

21 In the case of the Administrator v. Tinlin and White
22 NTSB Order Number EA-5658, the Board utilized the definition of
23 the doctrine of laches as it is defined in Black's Law Dictionary.
24 The doctrine of laches is an equitable doctrine by which a court
25 denies relief to a claimant who has unreasonably delayed in

1 asserting the claim when the delay has prejudiced the party
2 against whom relief is sought.

3 The United States Court of Appeals for the District of
4 Columbia Circuit has defined the doctrine of laches as an
5 equitable defense that applies where there is, one, a lack of
6 diligence by the party against whom the defense is asserted; and
7 two, prejudice to the party asserting the defense. And that is
8 cited in Manin v. NTSB, 627 F.3d 1239, 1241 (D.C. Circuit 2011).

9 The court in Manin indicated that prior Board cases
10 required consideration of laches defenses if an airman could not
11 establish actual prejudice in its defense, which is attributable
12 to the Administrator's delay. Following the Manin opinion the
13 Board indicated that it would evaluate the laches defense on the
14 basis of whether the Respondent asserting the defense has
15 established that he or she suffered actual prejudice as the result
16 of the delay.

17 In Tinlin and White the Board found that a 3-year delay
18 by the Administrator in bringing an action after the Administrator
19 discovered a possible maintenance violation was prejudicial to the
20 Respondent, the Board found persuasive Respondent's arguments that
21 because the Administrator's delay they were unable to identify
22 witnesses to testify in their defense. The Respondents also
23 asserted that notes of interviews obtained by the FAA 3 years
24 earlier had been discarded and were necessary because of
25 discrepancies existed in different interviews with the

1 Respondents, which were conducted on different dates. In
2 addition, the aircraft that was the subject of maintenance in that
3 case had been placed back in service. The Respondents maintained
4 that had the charges been timely brought the very aircraft in
5 issue could have been viewed.

6 I did not find the Respondent in this case has
7 established, one, that there has been a delay by the
8 Administrator. The Administrator was informed in July of 2012 of
9 the potential violations in this case and they initiated an
10 investigation, conducted that investigation, obtained records and
11 proceeded without any noticeable delay or delay that has been
12 pointed out by Respondent in bringing the action. Therefore, I
13 cannot find that the Administrator has delayed the action in this
14 case. They became aware of it, they investigated the case and
15 they pursued the case within a reasonable time frame.

16 The Respondent's defense in this case is that he was
17 advised by counsel that his federal convictions were for
18 infractions. Respondent testified he did not try to contact his
19 attorneys so that they could corroborate his testimony.
20 Respondent has not testified that those attorneys were not
21 available. He simply said that he did not contact them.

22 Therefore, as to prejudice there was no prejudice as to
23 the availability of the witnesses that could corroborate
24 Mr. Carpenter's testimony. As to office notes of Mr. Carpenter's
25 Aviation Medical Examiners, the Respondent has not specifically

1 alleged that an Aviation Medical Examiner told, him, Mr. Carpenter
2 to answer no to 18(w) nor has the Respondent specifically
3 testified or argued that he indeed spoke to or discussed the
4 answer to 18(w) with any one of his Aviation Medical Examiners.
5 Furthermore, as I have already indicated, the Respondent testified
6 that he would not have asked an AME a question about his
7 convictions because he believed that they were infractions and not
8 misdemeanors.

9 Therefore, I do not find the delay in the
10 Administrator's bringing the case, I do not find that the
11 Respondent has been prejudiced. Witnesses are available to
12 corroborate the defense that he is relying upon in this case so I
13 cannot find that he has been prejudiced in any way in this case.

14 In conclusion, having found that the Administrator has
15 proven the alleged violations of the Federal Aviation Regulations
16 in the Administrator's complaint by a preponderance of reliable,
17 probative and credible evidence I now turn to the sanction imposed
18 by the Administrator in this case.

19 In addressing the issue of sanction in this case I must
20 note that on August 3rd, 2012, Public Law 112-153, known as the
21 Pilot's Bill of Rights, was signed into law by the President of
22 the United States. It became effective immediately. Pilot's Bill
23 of Rights specifically strikes from 49 USC 44709 language, which
24 provides that in cases involving airman medical certificate
25 denials the Board is bound by all validly adopted interpretations

1 of law and regulations the Administrator carries out unless the
2 Board finds an interpretation is arbitrary, capricious or
3 otherwise not in accordance with the law.

4 Pilot's Bill of Rights also strikes from 49 USC 44709
5 and 44710 language that in cases involving amendment,
6 modifications, suspensions or revocations of airman certificates
7 the Board is bound by all validly adopted interpretation of laws
8 and regulations the Administrator carries out and have written
9 Agency policy guidance available to the public relating to
10 sanctions to be imposed under the section unless the Board finds
11 an interpretation is arbitrary, capricious, or not in accordance
12 with the law.

13 While I am no longer bound by law to give deference to
14 the Administrator the Agency is entitled to the judicial deference
15 due all federal administrative agencies under the Supreme Court
16 decision of Martin v. Occupational Safety and Health
17 Commission and others at 499 US page 144; also cited at 111
18 Supreme Court 1171. It's a 1991 case. In applying the principles
19 of judicial deference to the interpretations of laws, regulations
20 and policies that the FAA Administrator carries out, and I have to
21 weigh the circumstances in each case to determine if the sanction
22 selected by the Administrator is appropriate.

23 In this case the Administrator has admitted into
24 evidence the sanction guidelines. Special Agent Phillips
25 indicated that he consulted the sanction guidelines in making his

1 recommendation, that revocation is the appropriate remedy in this
2 case. The Administrator argues that Mr. Carpenter is not credible
3 and based on these facts revocation in this case is warranted.

4 The Respondent makes no argument that a lesser sanction
5 is appropriate in this case. He argues, and understandably so,
6 that revocation should not be imposed against his client. He
7 argues that the Respondent has not had an accident, incident or
8 infraction since 2001. However, there is case law by the Board
9 that states that these are not mitigating circumstance, but rather
10 conduct that is expected of any airman. The Respondent does not
11 argue that the Administrator is not entitled to the degree of
12 deference for which he claims.

13 The Respondent in this case has made the same
14 misrepresentation 13 times on 13 applications for medical
15 certificates from 2001 to 2012. He has made these representations
16 as he has advanced in his aviation training, and knowledge. He
17 has taught flight students. He has taught instrument training.
18 He has testified as to all that he has achieved as an aviator. I
19 do not find that his claim that he believes his three convictions
20 were for infractions and not misdemeanors when he answered no to
21 18(w) to be credible.

22 I believe that Mr. Carpenter is a highly intelligent
23 man, certainly that has been established through his education and
24 what he has accomplished in aviation. Again, I can't find that a
25 person of that intelligence would think that his convictions were

1 infractions and not at the minimum misdemeanors.

2 Board precedence firmly establishes that even one
3 intentional falsification compels a conclusion that the falsifier
4 lacks the necessary care, judgment and responsibility required to
5 hold any airman certificate and that decision is Administrator v.
6 Berry, at NTSB Order EA-2689. It's a 1998 case and that was
7 decided prior to Pilot's Bill of Rights and it was prior to the
8 development of the sanction guidelines.

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

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ORDER

IT IS ORDERED that:

1. The Emergency Order of Revocation in this case, the complaint herein, be, and is hereby, affirmed as issued.

2. I find that effective immediately any and all airman medical certificates held by the Respondent, including his first class airman medical certificate issued to him on or about November 1st, 2012, are to be revoked. Any and all certificates you hold, including your Commercial Pilot and Flight Instructor Certificate No. (omitted) and Ground Instructor Certificate (omitted) are hereby revoked.

This order is entered the 23rd day of October in Birmingham, Alabama.

EDITED ON
OCTOBER 30, 2013

ALFONSO J. MONTAÑO
Chief Administrative Law Judge

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APPEAL

ADMINISTRATIVE LAW JUDGE MONTAÑO: That completes my oral initial decision. As I past indicated, the court reporter will pass out the appeal rights to both the Administrator and the Respondent.

This emergency case, the time to file for an appeal is 2 days. So you do have to be very mindful of that time period to file the appeal. That appeal would go to the five Board members on the National Transportation Safety Board. It is arguments that will be made through written briefs. They will make a decision as to whether to either reverse my decision, to remand the decision for further proceedings or to affirm my decision.

So that is essentially the next step for the appeal in this case. From there, there is an appeal, of course, to the Circuit Court of Appeals or Federal District Court and all the way up to the Supreme Court if the Respondent feels that is appropriate. Certainly the Administrator may feel that I have made some errors and wishes to appeal my rulings, but at this point that informs the parties of their appeal rights. Please read them carefully. Please be very mindful of the time frames that are applicable to this case.

I appreciate your patience in going through this long decision and for your representation of your respective clients. You did the best you could with the information you had. And I appreciate your presentations and the respect you have shown to me

1 and this process,

2 Thank you all very much.

3 Mr. Carpenter, I wish you the best. I wish this could
4 have been a different decision, unfortunately that is the decision
5 I have to make based on the evidence before me.

6 Gentlemen, I wish you well and we will go off the record
7 at this point. Have a safe trip home.

8 (Whereupon, at 5:11 p.m., the hearing in the above-
9 entitled matter was concluded.)

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CERTIFICATE

This is to certify that the attached proceeding before the

NATIONAL TRANSPORTATION SAFETY BOARD

IN THE MATTER OF: Michael Joseph Carpenter

DOCKET NUMBER: SE-19559

PLACE: Birmingham, Alabama

DATE: October 23, 2013

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.

Vikki P. Baker
Official Reporter

Letha J. Wheeler
Transcriptionist