SERVED: February 19, 2025

NTSB Order No. EA-5996

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 14th day of February, 2025

CHRIS ROCHELEAU,[1] Acting Administrator, Federal Aviation Administration, Complainant, v. JASON T. LOUGHREY, Respondent.	)	Docket SE-31184

OPINION AND ORDER

1. *Background*

Respondent appeals the oral initial decision of Administrative Law Judge Darrell L. Fun, issued on October 19, 2023.[2] By that decision, the law judge determined that the Administrator proved respondent violated 14 C.F.R. § 67.403(a)(1), 14 C.F.R. § 61.15(e) and 14 C.F.R.

[1] The previous caption for this case was Michael Whitaker, Administrator, Federal Aviation Administration v. Jason T. Loughrey.

[2] A copy of the law judge's initial decision is attached.

§ 61.15(d)[3], and therefore he affirmed the Administrator's emergency revocation of respondent's commercial pilot certificate, airman medical certificate, and any other airman certificates that respondent might hold in accordance with 14 C.F.R. § 67.403(b) and (c) and 14 C.F.R. § 61.15(d) and (f).[4] Respondent timely appealed. For the reasons set forth below, we deny respondent's appeal and affirm the law judge's decision and revocation of respondent's certificates.

A. Facts

1. Traffic Stops and Related Actions

Respondent has had a commercial pilot certificate since 2004.[5] On January 28, 2011, he

[3] Under the pertinent portion of § 67.403(a)(1), no person may make a fraudulent or intentionally false statement on an application for a medical certificate. Under § 61.15(e), each person holding a certificate issued under this part shall provide a written report of each motor vehicle action to the FAA no later than 60 days after the motor vehicle action. Under § 61.15(d), a motor vehicle action occurring within 3 years of a previous motor vehicle action is grounds for suspension or revocation of any certificate, rating, or authorization issued under that part.

[4] The Administrator outlined the following in the complaint:

> Under 14 C.F.R. § 61.15(d), a motor vehicle action within three years of another motor vehicle action may result in the denial of an application for, or suspension or revocation of, any certificate issued under this part;
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> Under 14 C.F.R. § 61.15(f), failure to comply with 14 C.F.R. § 61.15(e) is grounds for the suspension or revocation of any certificate issued under this part;
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> Under 14 C.F.R. § 67.403(b), the commission by any person of an act prohibited under paragraph (a) of this section is a basis for suspending or revoking all airman and medical certificates and ratings held by that person; and
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> Under 14 C.F.R. § 67.403(c), an incorrect statement upon which the FAA relied, made in support of an application for a medical certificate, is a basis for revocation or suspension of a medical certificate.

Compl. at 3. Respondent waived his right to the emergency procedures.

[5] Tr. at 117.

was stopped and arrested for failure to stop at a stop sign and driving while intoxicated (DWI) – operating a motor vehicle with a blood alcohol concentration (BAC) of 0.08 or more.[6] Respondent was found to have a BAC of 0.13.[7] On March 15, 2011, he was convicted of DWI and, as a result, his driver's license was revoked.[8]

On November 17, 2012, respondent was stopped and arrested for another DWI.[9] He was found to have a BAC of 0.16, and ultimately was convicted of DWI in the third degree on March 5, 2014, and based on that conviction, had his driver's license again revoked.[10]

2. Application for a Medical Certificate and FAA Investigation

On November 23, 2021, respondent submitted an application (FAA Form 8500-8) for a first class medical certificate through the FAA's online MedXpress database.[11] In response to Question 18.v., which asks whether an applicant has a "[h]istory 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), 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" respondent checked "Yes".[12] On the form 8500-8 Continuation Sheet under explanations, respondent wrote "18V DUI 2001" and nothing further.[13] In addition, on his

[6] Exh. A-7 at 10.

[7] Exh. R-5 at 5.

[8] Exh. A-7 at 10 and ALJ-1 (Joint Stipulation) at 1.

[9] Exh. R-5 at 7.

[10] *See id.* at 10-14 and Exh. ALJ-1 at 1.

[11] Exh. A-4 at 2.

[12] *Id.*

[13] *Id.* at 3.

November 2021 medical certificate application, respondent certified that all statements provided by him were complete and true to the best of his knowledge.[14]

B. Procedural History and Testimony

On January 6, 2023, the Administrator issued an emergency order, submitted as the complaint in this case, revoking respondent's commercial pilot certificate and airman medical certificate and any other certificates issued to respondent.[15] The complaint alleged respondent violated 14 C.F.R. § 67.403(a)(1) by intentionally falsifying his answer to Question 18.v. on his August 2018 medical certificate application, 14 C.F.R. § 61.15(e) by failing to provide a written report of his motor-vehicle action to the FAA within 60 days of the action, and 14 C.F.R. § 61.15(d) by having a motor vehicle action that occurred within three years of a prior motor vehicle action.[16] The order further noted that violations of 14 C.F.R. § 61.403(b), 14 C.F.R. § 61.15(4), 14 C.F.R. § 67.403(c), and 14 C.F.R. § 61.15(d) were the basis for suspending or revoking all airman and medical certificates, and that an incorrect statement upon which FAA relied was a basis for revocation or suspension of a medical certificate.[17]

In his answer to the complaint, respondent denied the allegation that his response to Question 18.v. on his FAA Form 8500-8 was not correct in that it failed to mention his 2012 DWI[18] arrest and driver's license revocation and subsequent 2014 conviction and revocation.[19]

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[14] *Id.* at 2.

[15] Compl. at 4-8.

[16] *Id.* at 6.

[17] *Id.*

[18] While DUI and DWI are technically different terms, functionally they have the same effect on certificate action. For purposes of consistency, the term DWI will be used, except when directly quoting other sources.

[19] Answer at ¶ 14.

Respondent also denied that the information provided in response to Question 18.v. resulted in the issuance of an airman medical certificate without consideration of his DWI arrests, driving privilege revocations, and convictions.[20]

The law judge conducted a hearing on October 17-18, 2023, and issued the oral initial decision the next day. At the hearing before the law judge, the Administrator called two witnesses: Heather Sullivan, Special Agent with the FAA; and Eric Shreder, D.O., aviation medical examiner (AME) for the FAA.[21] The respondent called one witness, his mother, Julie Loughrey, and he testified on his own behalf.[22]

1. Testimony of Heather Sullivan

Ms. Sullivan testified that she has been working as a FAA Special Agent since 2019, primarily in investigations.[23] She testified that she investigated respondent's case by reviewing his driving record, medical file, and arrest record.[24] Ms. Sullivan testified she discovered that respondent's answer of "DWI 2001" in response to question 18.v. on his FAA Form 8500-8 was incorrect after comparing it with his driving records that indicated he had DWI convictions in 2011 and 2012.[25]

Ms. Sullivan testified that in an email, respondent admitted to having had DWIs in 2011 and 2012 but claimed that he had admitted them to Dr. Shreder, the Aviation Medical Examiner

[20] *Id.* at ¶ 15.

[21] *See* Tr. at 21, 78.

[22] *See id.* at 115, 140.

[23] *Id.* at 22.

[24] *Id.* at 25-26.

[25] *Id.* at 27-29. *See* Exh. A-4.

(AME) who evaluated respondent.[26] Ms. Sullivan compared this to Dr. Shreder's notes from the examination, which indicated that the respondent only disclosed one DWI at the examination.[27] Based on the conflicting information, Ms. Sullivan decided to continue with her investigation.[28]

Ms. Sullivan reported that she next interviewed Dr. Shreder, by phone.[29] Dr. Shreder recollected to Ms. Sullivan that respondent had reported just one DWI in 2001 to him.[30] Dr. Shreder reported to Ms. Sullivan that he would remind airmen of their obligations to report DWIs and that he had a checklist he provided to airmen explaining what sorts of infractions could have their medical certificates deferred.[31] Ms. Sullivan deemed Dr. Shreder to be "very credible."[32]

Ms. Sullivan testified that she found it notable that respondent sent a request to the AME to correct the records in his file, which to her demonstrated that respondent was aware he had only disclosed one of his DWIs.[33]

Ms. Sullivan testified that she next received a statement from Dr. Shreder along with his notes from the exam.[34] She stated the information confirmed that respondent told Dr. Shreder he had just one DWI in 2001 and that he understated his BAC as being .11, which was lower than

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[26] *Id.* at 28-30. *See* Exh. A-14.

[27] *Id.* at 30.

[28] *Id.* at 31.

[29] *Id.* at 32.

[30] *Id.*

[31] *Id.* at 31-32.

[32] *Id.* at 32.

[33] *Id.* at 34.

[34] *Id. See* Exh A-18.

the BAC levels documented in the record of his two DWIs.[35] Ms. Sullivan found this to be significant, as a BAC of .11 is considered "non-extreme," while the documentation showed that respondent has BAC of .16 in the 2012 incident, a level that is considered "extreme."[36] Ms. Sullivan also testified that she was impressed with how organized Dr. Shreder was in dealing with his patients.[37]

Going into further detail about her investigation, Ms. Sullivan testified that she did not find any sort of history involving respondent with the FAA.[38] Ms. Sullivan reviewed respondent's driving records, court records, and arrest records.[39]

Ms. Sullivan explained that a certificated airman has 60 days to report a motor vehicle action (MVA) to the FAA in writing.[40] MVAs include license suspension, revocation, or cancelation, alcohol related license suspension, or a conviction from an alcohol related motor vehicle incident.[41] She further testified that, based on her discussions with Dr. Shreder and respondent, as well as the other information she obtained, it appeared that respondent had violated 14 C.F.R. §§ 74.403(a)(1), 61.15(e), and 61.15(d)(2).[42]

On cross examination, Ms. Sullivan testified that there was a delay between respondent's appointment with Dr. Shreder and the issuance of the medical certificate, although she could not

[35] *Id.* at 34-35.

[36] *Id.* at *35.*

[37] *Id.* at 37.

[38] *Id.* at 38.

[39] *Id.*

[40] *Id.* at 39.

[41] *Id.*

[42] *Id.* at 40.

provide a reason for that delay.[43] She continued, stating that respondent maintained that he had informed Dr. Shreder of both DWIs and provided him with documentation of both; Dr. Shreder had faxed documentation regarding both DWIs to the FAA Civil Aerospace Medical Institute (CAMI) along with the respondent's form 8500-8; and Dr. Shreder was in possession of documents regarding both of the respondent's DWIs.[44] She also clarified that it was ultimately respondent's responsibility to report his alcohol-related incidents and nevertheless he indicated on his form 8500-8 that he had only one DWI.[45] Ms. Sullivan opined that respondent providing documentation of both DWIs did not negate the intentional falsification on the application.[46]

Ms. Sullivan testified that her main takeaway from her conversation with respondent and Dr. Shreder was that only one DWI was disclosed by the respondent on his medical application and that Dr. Shreder's recollection was that only one DWI was disclosed by respondent at his appointment. She found this to be corroborated by notes that Dr. Shreder made on the respondent's application while conducting his examination.[47] Ms. Sullivan testified that respondent explained to her that the note regarding a 2001 DWI on his medical application was a typo and that he was referring to the 2011 DWI.[48]

2. Testimony of Eric Shreder, D.O.

Dr. Shreder testified that he received a bachelor's degree from Boston College, a master's degree in experimental psychology from Villanova University, and a medical degree from

[43] *Id.* at 43.

[44] *Id.* at 48, 55, and 59.

[45] *Id.* at 62-63.

[46] *Id.* at 64.

[47] *Id.* at 70-71.

[48] *Id.* at 72.

Kirksville College of Osteopathic Medicine.[49] He completed initial FAA AME training in 2001 and stated that he has been a senior AME since 2003 as well as a human intervention motivation study (HIMS) sponsor for approximately ten years.[50] Dr. Shreder testified that, as a HIMS sponsor, he works with the FAA and airmen to monitor their sobriety and works with airmen struggling with drugs and alcohol to regain their medical certificates.[51]

In explaining what occurs at a typical AME examination for a pilot trying to get a medical certificate, Dr. Shreder testified that he performs an eye exam, as well as a full exam of the head, neck, thoracic area, and extremities.[52] If necessary, he performs an EKG and listens to the airman's heart and lungs.[53] Following the physical examination, Dr. Shreder collects a detailed medical history using the form 8500-8.[54] If the airman reports a DWI during the exam Dr. Shreder testified that he would complete an alcohol status event form and review it with the airman.[55] He then collects a personal statement, court records, and arrest records.[56] Dr. Shreder reported that it was common for an airman to report a DWI.[57]

Dr. Shreder next testified regarding his examination of the respondent, stating that he examined the respondent approximately two years prior to the hearing.[58] After he noticed that

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[49] *Id.* at 78.

[50] *Id.*

[51] *Id.*

[52] *Id.* at 79-80.

[53] *Id.* at 80.

[54] *Id.*

[55] *Id.*

[56] *Id.*

[57] *Id.*

[58] *Id.* at 80-81.

respondent answered question 18.v. positively, Dr. Shreder began to collect more information regarding the DWI from respondent.[59] Dr. Shreder testified that respondent told him that he only had one DWI in his life, it was more than five years ago, and it was "nonextreme."[60] Dr. Shreder further stated if he had been told by respondent that he had two DWIs in his past, he would have deferred the application immediately, placing a note in block 60 on the form.[61]

Dr. Shreder further elaborated that respondent brought him documentation of his DWI a few days or up to two weeks after the examination.[62] He explained that, typically, the records would be brought later during a non-scheduled appointment and he would quickly check what the BAC was to ensure that it was not over .15.[63] He admitted that, while ideally he should read all the documents, in this case, he had the records put in front of him quickly by someone in his office and, when he saw there was just one DWI on the top page, he stopped there and signed off on respondent's application.[64] Dr. Shreder did not recall talking directly with respondent when he dropped off the documentation.[65]

Dr. Shreder's handwritten exam notes reflected that respondent reported one "nonextreme" incident that occurred while he was on his way home from a bar, and that he neither lost his license nor was required to use an ignition interlock system.[66] Dr. Shreder

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[59] *Id.* at 82.

[60] *Id.*

[61] *Id.* at 83.

[62] *Id.* at 85.

[63] *Id.* at 85-86.

[64] *Id.* at 86.

[65] *Id.* at 87.

[66] *Id.* at 89. *See* Exh. A-18.

testified that he told respondent that he needed proof of a BAC level from court records.[67] Dr. Shreder testified that he did not remember respondent ever telling him about a second DWI.[68]

On cross examination, Dr. Shreder testified that he did not realize until he was contacted by Ms. Sullivan that the documents respondent had submitted contained references to two separate DWIs, as he did not review all the documents submitted by respondent.[69] Dr. Shreder testified that he did not receive the respondent's personal statement.[70] He further testified that, if it had gone through all the pages provided by respondent, he would have seen the records from the second DWI and would not have issued the medical certificate.[71] Dr. Shreder stated that, although he should have gone through every page, he was influenced by respondent's application only containing a reference to one DWI.[72] Dr. Shreder testified that he had the ability to make changes on the form 8500-8.[73] He did not recall going over the documentation respondent brought in regarding his DWIs with respondent and testified that someone on his staff may have gone over it with respondent.[74]

On questioning by the law judge, Dr. Shreder testified that when an airman drops off paperwork they typically do not have an appointment scheduled and just hand it off to whichever staff member is currently at the desk behind the window.[75] He explained that he relies on his

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[67] *Id.*

[68] *Id.* at 90.

[69] *Id.* at 91-92.

[70] *Id.*

[71] *Id.* at 95-96.

[72] *Id.* at 96.

[73] *Id.* at 97.

[74] *Id.*

[75] *Id.* at 100-101.

staff to review the records and report their findings to him.[76] Dr. Shreder testified that since this episode, he has stopped relying on his staff to present him the documentation while he is between patients and that he will now personally sit down and go through every page.[77] Dr. Shreder testified that he takes handwritten notes while he is examining an airman and then relies on a staff member to transcribe them into the computer system.[78] He estimated that he sees approximately 20 to 25 airmen in a typical day.[79] Dr. Shreder reported that airmen will rarely report inaccuracies in their applications to him and that he occasionally will follow up after the initial appointment but he did not in this case because he did not fully review the records that respondent dropped off.[80]

3. Testimony of Respondent

Respondent testified that he is employed at Zona Builders, which is an underground utility contractor, and has lived in Phoenix, Arizona for three years.[81] He first received his student pilot certificate in 2001 in Minnesota, received his instrument, commercial, and multiengine certificates in 2004, and flew until 2007.[82] He testified that, while he had not planned on flying again after 2007, as he pursued other work, he recently decided to pick it back up again as a hobby and potentially a career.[83] As part of his decision to begin flying again, he

[76] *Id.*

[77] *Id.* at 102.

[78] *Id.* at 102-103.

[79] *Id.* at 103.

[80] *Id.* at 103-104.

[81] *Id.* at 115-16.

[82] *Id.* at 116-117.

[83] *Id.* at 117.

needed a current medical certificate, as he had not held one since June 4, 2007.[84] Respondent testified that he applied for a new medical certificate in the lobby of Dr. Shreder's office through MedXPress.[85]

Respondent testified that when completing his application in MedXPress he answered yes to question 18.v.[86] Respondent explained that he wrote down what he knew in response to the question but that he did not know how to put in information for both of his DWIs.[87] Respondent testified that he had never met Dr. Shreder prior to the appointment.[88] Respondent testified that Dr. Shreder reviewed his health history and then asked him to explain his answer to question 18.v.[89] Respondent said he told Dr. Shreder that he had two DWIs, did not know the specifics, but that they were both at least ten years prior.[90] Respondent said that the only further information he would need to provide were copies of the reports to confirm that his BAC was within allowable limits and that he gave the approximate dates and the counties where the DWIs took place.[91]

He testified that he did not recall writing "2001" in response to question 18.v. but assumed it must have been a typographical error on his part.[92] He stated that he only put down one DWI because he was not sure exactly what information was needed or whether or not he was

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[84] *Id.*

[85] *Id.* at 118.

[86] *Id.*

[87] *Id.* at 119.

[88] *Id.* at 120.

[89] *Id.*

[90] *Id.* at 121.

[91] *Id.*

[92] *Id.* at 121-122.

required to include information on arrests, convictions, probation, or loss of license.[93] Respondent recounted that Dr. Shreder said he needed to see all of respondent's arrest reports before he could issue a medical certificate.[94] Respondent clarified that Dr. Shreder only asked for respondent's arrest reports and did not request a personal statement.[95]

Respondent testified that he went home, asked his mother to email him the court documents for his DWIs, and brought them to Dr. Shreder's office on another day.[96] Respondent testified that he handed the documents to a person at the front counter and did not see Dr. Shreder.[97] The next day respondent recalled receiving a phone call from Dr. Shreder's office stating that his medical certificate was ready to be issued, so he then picked up the certificate.[98] Respondent testified that no one ever questioned him about the documents until his emergency revocation.[99]

Respondent further testified that, after speaking with Ms. Sullivan in June of 2022, he sent an email to Dr. Shreder requesting to amend his medical certificate application.[100] He explained that he wanted to be forthcoming and wanted to make sure that both of his DWIs were reflected in his application.[101] Respondent testified that, prior to his revocation, he had no knowledge of 14 C.F.R. § 61.15 and that the regulation did not influence his decision on how to

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[93] *Id.* at 122.

[94] *Id.*

[95] *Id.*

[96] *Id* at 123.

[97] *Id.* at 125.

[98] *Id.*

[99] *Id.*

[100] *Id.* at 127.

[101] *Id.*

answer question 18.v.[102] Respondent reiterated that he was confused about how he was expected to answer question 18.v.[103]

On cross examination, respondent admitted that, in response to question 18.v. he could have typed "DUI 2011, 2012."[104] Respondent admitted that he read box 20 on the application and signed that his answers were true and correct.[105] He testified he was aware that having DWIs could affect whether an airman is issued a medical certificate and confirmed that he only emailed Dr. Shreder after learning he was under investigation by the FAA.[106] Respondent denied that he knew two DWIs would get his medical certificate deferred when he met with Dr. Shreder.[107]

Upon questioning by the law judge, respondent confirmed that he read the instructions when completing the medical application and that he understood them.[108] Respondent testified that he was trying to recall specific dates when completing block 18 but could not, although he recalled that he had two DWIs.[109] Respondent could only vaguely recall that they occurred ten years prior.[110] Respondent stated did not recall that he put down "2001" on his application.[111]

On redirect, respondent testified that this was the first time he completed the medical application on an electronic device as opposed to paper.[112] Respondent testified that he was

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[102] *Id.* at 128-129.

[103] *Id.* at 129.

[104] *Id.* at 130.

[105] *Id.*at 131.

[106] *Id.*

[107] *Id.* at 133.

[108] *Id.* at 133-134.

[109] *Id.*at 134-135.

[110] *Id.* at 135.

[111] *Id.* at 136.

[112] *Id.* at 137.

considering how to report his arrests, convictions, loss of driving privileges, BAC levels, charges, and probation but did not know how to do so.[113]

4. Testimony of Julie Loughrey

Ms. Loughrey testified that she is the respondent's mother and currently resides in Scandia, Minnesota.[114] Ms. Loughrey recalled that the respondent went for a medical examination in November 2021 and that afterward he requested that she send him the documentation regarding his two DWIs.[115] Ms. Loughrey testified that there were 14 pages total, the first six pages were regarding the respondent's first DWI in Anoka County, and the remaining pages were regarding the second DWI in Ramsey County.[116]

C. Law Judge's Initial Oral Decision

In the oral initial decision, the law judge determined that the Administrator proved the regulatory violations of 14 C.F.R. §§ 61.15(d), 61.15(e), 67.403(a)(1), and 67.403(c) as alleged, by a preponderance of reliable and probative evidence.[117] In making this determination, the law judge summarized the procedural history of the case; the facts underlying the case; the Administrator's allegations and the regulatory violations alleged in the complaint; admitted exhibits; the testimony of the witnesses and respondent and addressed their credibility; the elements of the *Hart v. McLucas*[118] intentional falsification standard; and the case law on which

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[113] *Id.*

[114] *Id.*at 140.

[115] *Id.* at 140-141.

[116] *Id.* at 141.

[117] Oral Initial Decision at 9, 24.

[118] 535 F.2d 516 (9th Cir. 1976).

he relied.[119]

The law judge found that the first element of the *Hart v. McLucas* standard, a false representation, was met based on respondent's testimony as well as the Joint Stipulation of Facts.[120] The law judge next found that the second element, materiality, was met based on Board precedent that information provided on an application for an airman medical certificate is material because it is capable of influencing the FAA's decision on whether to issue a certificate.[121]

Turning to the third element of the *Hart v. McLucas* standard, the law judge determined that, in this case, it rested on the credibility of the witnesses.[122] The law judge found the testimony of Dr. Shreder to be credible, believable, and consistent with the overall evidence.[123] Dr. Shreder testified that he took contemporaneous notes that corroborated his testimony that respondent only reported a single DWI event in his lifetime during his examination.[124] While respondent challenged Dr. Shreder's credibility based on his failure to review all 14 pages of documentation provided to him by respondent, the law judge found that Dr. Shreder readily admitted his failure to review all the documents.[125]

On the other hand, the law judge determined that respondent's testimony was not

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[119] Oral Initial Decision at 4-25.

[120] *Id.* at 10-11.

[121] *Id.* at 11-12. Citing *Taylor v. Fed. Aviation Admin*., 351 F. Supp. 3d 97 (2018) affirming *Administrator v. Taylor*, NTSB Order No. EA-5611(2012); *Administrator v. Byrd*, NTSB Order No. EA-5782 (2016).

[122] *Id*. at 13.

[123] *Id.* at 16.

[124] *Id.*

[125] *Id.* at 16-20.

credible. He found that respondent's testimony that he reported two DWIs to Dr. Shreder to be inconsistent with Dr. Shreder's contemporaneous notes, and not credible.[126] The law judge also found that the explanation that he was confused by the application and did not know how to note that he had two DWIs in his past to not be credible as well.[127] The law judge concluded that, at the time respondent completed his application for medical certification, he knew that his explanations on the form, response to question 18.v., and his certification to the truth of the answers in the application were false.[128] He further found that, Dr. Shreder's failure to review all the documents did not change the fact that respondent indicated on his application he had only a single DWI in his lifetime thereby committing intentional falsification and that revocation was the appropriate sanction.[129]

D. Issues on Appeal

On appeal, respondent argues that the law judge erred as follows: 1) In disregarding the arrest and court documents submitted by respondent to Dr. Shreder;[130] 2) By not finding that the Administrator and Dr. Shreder failed to follow the FAA aeromedical policy and guidance;[131] 3) By finding Dr. Shreder's testimony credible;[132] 4) In dismissing respondent's affirmative defenses;[133] 5) By applying a double standard;[134] and 6) By finding that respondent violated both

[126] *Id.* at 20-21.

[127] *Id.* at 21.

[128] *Id.* at 22.

[129] *Id.* at 36-37

[130] Appeal Br. at 8.

[131] *Id.*at 10.

[132] *Id.* at 14.

[133] *Id.* at 16.

[134] *Id.* at 22.

14 C.F.R. § 67.403(a)(1) and 67.403(c).[135]

2. Decision

While we give deference to our law judge's rulings on certain issues, such as credibility determinations,[136] we review the case under *de novo* review.[137]

A. Intentional Falsification

To prove intentional falsification under *Hart v. McLucas*, 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.[138] Respondent does not dispute that his answer of "DUI 2001" in response to question 18.v. was false, nor does he dispute the materiality of the information.[139] We find that the law judge's conclusion regarding the first two elements is consistent with the record and Board precedent. The record shows that the answer of "DUI 2001" to Question 18.v. on the November 2021 application was false because respondent had DWIs in 2011 and 2012 and his driver's license was suspended as a result.[140]

In addition, Board precedent is unambiguous that the information provided on medical certificate applications is material,[141] and Dr. Shreder credibly testified that respondent's answer

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[135] *Id.* at 23.

[136] *Administrator v. Porco*, NTSB Order No. EA-5591 at 13 (2011), *aff'd sub nom.*, *Porco v. Huerta*, 472 Fed. App'x 2 (D.C. Cir. 2012) (per curiam).

[137] *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) (in making factual findings, the Board is not bound by the law judge's findings).

[138] 535 F.2d at 519.

[139] Exh. ALJ-1 at 2.

[140] *Id.* at 1.

[141] *See, e.g.*, *Administrator v. Burbank*, NTSB Order No. EA-5860 (2019); *Administrator v.*

of "DUI 2001" was important in his decision to issue a medical certificate rather than immediately defer the certificate.[142] Therefore, any response to Question 18.v. would be in reference to a material fact. Thus, the law judge correctly found that the Administrator has met his burden of proof regarding the first two elements of the *Hart v. McLucas* test.

The third element of the *Hart v. McLucas* test requires respondent to have known the representations were false when he made them. This element is also not in dispute. Respondent testified that he only wrote down one DWI on his application knowing he had two DWIs in his past and acknowledged that he could have written "DUIs 2011, 2012" instead of simply "DUI 2001" and that he signed box 20 knowing that the information he had written on his application was incomplete.[143]

Respondent, in his defense, claims that he reported his entire DWI history to the AME orally at his examination.[144] This differs from the testimony of the AME, Dr. Shreder, who testified that respondent only informed him of one DWI event at his examination.[145] Ultimately, this comes down to a determination of which witness is more credible.

We will not overturn a law judge's credibility determination unless a party can establish the determination was arbitrary and capricious.[146] Respondent argues that it was inconsistent for

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Tseng, NTSB Order No. EA-5817 (2017) (citing *Administrator v. Taylor*, NTSB Order No. EA-5611 at 4 (2012), *aff'd sub nom. Taylor v. Huerta*, 723 F.3d 210 (D.C. Cir. 2013)); *Administrator v. Byrd*, NTSB Order No. EA-5782 at 78 (2016) ("In addition, the Board has repeatedly held that any entry on an application for a medical certificate is material because the FAA relies upon those entries in making a determination as to whether to issue or not issue the certificate.").

[142] Tr. at. 83, 96.

[143] *Id.* at 122, 130-131.

[144] *Id.* at 121.

[145] *Id.* at 82.

[146] *See Porco*, *supra* note 135 at 10-11 (2011); *Administrator v. Dillmon*, NTSB Order No. EA-5528 (2010).

the law judge to criticize Dr. Shreder for his failure to read all the documentation given to him by respondent while also finding his testimony credible. However, the ALJ thoroughly explained his reasoning for his credibility findings. The law judge found that Dr. Shreder's testimony was consistent with the contemporaneous notes he took during the examination of respondent.[147] The ALJ acknowledged Dr. Shreder's shortcomings as an AME by failing to carefully review all 14 pages of the documentation provided to him by respondent, however he balanced this against Dr. Shreder's ready admission of the mistakes he made.[148]

Turning to the credibility of respondent, the law judge explained that he did not find credible respondent's claim that he did not know how to properly answer question 18.v. As the law judge pointed out, it was well within the experience and education of respondent to know how to honestly report his two DWIs on the application.[149]

Given that the law judge's findings regarding the credibility of respondent and Dr. Shreder are rooted in evidence, testimony, and the law, they are not arbitrary and capricious. Thus, we have no reason to overturn the finding and will uphold the law judge's determination that respondent intentionally falsified the November 2021 medical certificate application by failing to report his 2011 and 2012 arrests and convictions for DWI, and subsequent loss of driving privileges, in violation of 14 C.F.R. § 67.403(a)(1).

B. Respondent has not proven a defense under the stale complaint rule.

Respondent argues that the Administrator's complaint must be dismissed under the stale

[147] Oral Initial Decision at 16-17.

[148] *Id.* at 17.

[149] *Id.* at 21-22.

complaint rule, citing an alleged delay in pursuing the case.[150] As the rule provides, the six-month limitations period does not apply to cases, such as here, in which the Administrator alleges a respondent's conduct reflects a lack of qualification necessary to hold a certificate and assuming all the allegations in the complaint were true, the Administrator sufficiently alleged a basis for questioning respondent's qualifications.[151] Thus, given the specifically pleaded allegations in the complaint, the law judge properly found that, if such allegations were true,

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[150] The Board's "stale complaint rule" states:

> Where the complaint states allegations of offenses which occurred more than 6 months prior to the Administrator's advising the respondent as to reasons for proposed action under 49 U.S.C. § 44709(c), the respondent may move to dismiss such allegations as stale pursuant to the following provisions:
>
> (a) In those cases where the complaint does not allege lack of qualification of the respondent:
>
> (1) The Administrator shall be required to show, by reply filed within 15 days after the date of service of the respondent's motion, that good cause existed for the delay in providing such advice, or that the imposition of a sanction is warranted in the public interest, notwithstanding the delay or the reasons therefor.
>
> (2) If the Administrator does not establish good cause for the delay, or for the imposition of a sanction in the public interest notwithstanding the delay, the law judge shall dismiss the stale allegations and proceed to adjudicate the remaining portion of the complaint, if any.

In those cases 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 timely, are assumed to be true. If so, the law judge shall deny the respondent's motion. If not, the law judge shall proceed as in paragraph (a) of this section. 49 C.F.R. § 821.33.

[151] 49 C.F.R. § 821.33(b); *see Administrator v. Repetto*, NTSB No. Order EA-5727 at 5-6 (2014); *Administrator v. Armstrong*, NTSB Order No. EA-5660 at 4-6 (2013) (finding that the Administrator's complaint was too generally pleaded to present a lack of qualifications, stating, "to survive a motion to dismiss under the stale complaint rule in a case in which more than six months have passed since the alleged violation, we hold the Administrator must plead the complaint in such a manner as to provide sufficient specificity as to the seriousness of the alleged violation.").

there existed a legitimate issue of a lack of qualification and the stale complaint rule is inapplicable.

C. Respondent has not proven a defense under the doctrine of laches.

Respondent argues that the Administrator's complaint must be dismissed under the doctrine of laches, citing an alleged delay in pursuing the case. The doctrine of laches is an equitable doctrine "by which a court denies relief to a claimant who has unreasonably delayed in asserting the claim, when that delay has prejudiced the party against whom relief is sought."[152]

To meet his burden of proving an affirmative defense under the equitable doctrine of laches, respondent must first prove a lack of diligence in FAA's pursuit of the case against him and that he suffered actual prejudice as a result of the delay.[153] He argues that there was a 23-month delay in the handling of this claim[154] but, in actuality, the evidence shows that the FAA opened their investigation in June 2022, seven months after the respondent attended his examination in November 2021.[155] The mere passage of time in and of itself does not demonstrate that the Administrator was not diligently working on the case. Respondent alleges that he suffered prejudice and points to instances during his testimony where Dr. Shredder expressed uncertainty about his memory. This alleged prejudice is highly speculative, as it assumes first, that if Dr. Shredder had testified sooner, his memory would have been improved and, second, that if Dr. Shredder's memory had been better, his testimony would have been more beneficial to respondent. We find this argument unavailing.

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[152] *Administrator v. Tre Aviation Corp. and Mace*, NTSB Order EA-5722 (2014) (citing Black's Law Dictionary 891 (8th ed. 2004)).

[153] *Administrator v. Tinlin and White*, NTSB Order No. EA-5658 (2013) at 7-12; *see also Costello v. United States,* 365 U.S. 265, 282 (1961).

[154] Appeal Br. at 21.

[155] Exh. A-1 at 2.

D. Respondent has not proven a defense of reasonable reliance

Respondent contends that he relied on Dr. Shreder to review his arrest and court records and, in turn, correct the application, as needed.

Reasonable reliance is an affirmative defense, which, if proven, can excuse a respondent's admitted violation. In asserting an affirmative defense, the burden shifts to the respondent to prove such an affirmative defense by a preponderance of evidence.[156] We have held a respondent must fulfill the burden of proving the factual basis for the affirmative defense, as well as the legal justification.[157]

Our doctrine of reasonable reliance is one of narrow applicability.[158] In the controlling case concerning reasonable reliance, *Administrator v. Fay and Takacs*, the Board held, "[i]f … a particular task is the responsibility of another, if the [pilot-in-command] has no independent obligation … **or** ability to ascertain the information, and if the captain has no reason to question the other's performance, then and only then will no violation be found."[159] In determining whether reliance was reasonable, we consider the facts of each case and the entire circumstances surrounding the alleged violation.[160] We have held the doctrine also may apply to cases "involving specialized, technical expertise where a flight crew member could not be expected to

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[156] *Administrator v. Hermance*, NTSB Order No. EA-5706 (2014); *Administrator v. Tsegaye*, NTSB Order No. EA-4205 at 5-6 (1994) (stating once the Administrator establishes a *prima facie* case, the burden shifts to the respondent, who has the opportunity to prove an affirmative defense excuses his conduct)

[157] *Administrator v. Donohue, et al.*, NTSB Order No. EA-5314 at 9 (2007).

[158] *Administrator v. Angstadt*, NTSB Order No. EA-5421 at 18-19 (2008), pet. for review denied, *Angstadt v. FAA*, No. 09-1005, 348 Fed.Appx. 589 (D.C. Cir. Sept. 24, 2009) (per curiam).

[159] NTSB Order No. EA-3501 at 10 (1992) (emphasis in original).

[160] *Administrator v. Haddock*, NTSB Order No. EA-5596 (2011).

have the necessary knowledge."[161]

In this case, we find the law judge correctly summarized and applied the reasonable reliance test, namely, he stated that respondent has an independent obligation to accurately and fully disclose his two DWIs on his application. While he provided information regarding his two DWIs to the AME when he later dropped off the documentation of them, this action did not absolve respondent of his own obligation to provide complete and accurate information on his application. Based on the foregoing, we reject respondent's affirmative defense of reasonable reliance.

E. Respondent has not proven a defense of "Double Standard"

Respondent asserts an affirmative defense of "Double Standard," claiming that the AME is being held to a different standard than he is and that this therefore obviates his own independent obligation to provide complete and accurate information on his application (FAA Form 8500-8) for a first class medical certificate. Respondent provides no citation that such an affirmative defense has ever been recognized by this agency and a review of the case law does not yield any such precedent.

Respondent also argues that the Administrator and the AME failed to follow FAA policy. While this may be true, this does not negate respondent's own intentional falsification on his FAA Form 8500-8.

Again, as stated above, while the AME may have not fully reviewed the documentation provided by the respondent to him, it does not eliminate the respondent's individual obligation to provide complete and accurate information on his application. Accordingly, we reject respondent's affirmative defense of "Double Standard."

[161] *Id.* at 9, n.29.

F. The law judge's finding of a violation of 14 C.F.R. § 67.403(c) does not preclude the revocation of all certificates held by the respondent

Respondent argues that because the law judge found a violation of 14 C.F.R. § 67.403(c) in addition to a violation of 14 C.F.R. § 67.403(a)(1), he erred as a matter of law by revoking respondent's pilot certificate in addition to his medical certificate. However, 14 C.F.R. § 67.403(c) simply notes that an incorrect statement on a medical certificate application may serve as the basis for the suspension or revocation of a medical certificate. Neither the Administrator nor the law judge claimed 14 C.F.R. § 67.403(c) would form a basis for revoking respondent's pilot certificate. Instead, § 67.403(c) serves as an alternative basis to revoke respondent's medical certificate for an incorrect statement if the law judge found that respondent had not intentionally falsified his medical application. The two provisions are not in conflict because respondent intentionally falsified his medical certificate application.

Furthermore, the two regulations are not mutually exclusive; both violations can exist at the same time, as the ALJ found. The critical notion as it relates to this case is that, under the FAA's sanction guidance and 14 C.F.R. § 67.403(b), respondent's intentional falsification alone is grounds for the revocation of all his certificates.

G. Conclusion

The preponderance of reliable, probative, and substantial evidence shows that respondent intentionally falsified the November 2021 medical certificate application when he answered "DUI 2001" in response to Question 18.v. and failed to report his two DWIs and related arrests and loss of driving privileges, in violation of 14 C.F.R. § 67.403(a)(1). Further, the evidence also makes clear that respondent failed to inform the FAA in writing of both of his DWIs, subsequent convictions, and loss of driving privileges, thereby violating 14 C.F.R. § 61.15(e). Finally, the

evidence shows that the respondent had a motor vehicle action that occurred within three years of a prior motor vehicle action in violation of 14 C.F.R. § 67.403(d). The law judge did not err in his findings, and the Administrator proved that respondent violated 14 C.F.R. § 67.403(a)(1), 14 C.F.R. § 61.15(e), and 14 C.F.R. § 61.15(d) by the preponderance of reliable, probative, and substantial evidence. The Board's case law establishes revocation as the appropriate sanction for intentional falsification cases, and respondent does not offer any mitigating factors.[162] Moreover, by failing to report his two DWIs accurately on his medical certificate application, respondent prevented the AME from following the necessary steps to defer his medical certificate to the FAA for further action.[163] Thus, we further find the law judge did not err in affirming the sanction of revocation.

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 revocation of any and all airman certificates held by respondent, including his commercial pilot certificate and airman medical certificate, is affirmed.

HOMENDY, Chairman; BROWN, Vice Chairman; GRAHAM, CHAPMAN, AND INMAN, Members of the Board, concurred in the above opinion and order.

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[162] *See*, *e.g.*, *Administrator v. Newman*, NTSB Order No. EA-5898 (2021). *Administrator v. Byrd*, NTSB Order No. EA-5782 (2016); *Administrator v. Tseng*, NTSB Order No. EA-5817 (2017). Further, under *Pham v. Nat'l Transp. Safety Bd., et al.*, 33 F.4th 576, 583 (D.C. Cir. 2022), the Board should only overturn the Administrator's sanction if it is "unwarranted in law or without justification in fact").

[163] *See* Tr. at 83.

UNITED STATES OF AMERICA

NATIONAL TRANSPORTATION SAFETY BOARD

OFFICE OF ADMINISTRATIVE LAW JUDGES

In the matter of:	*	
	*	
POLLY TROTTENBERG,	*	
ACTING ADMINISTRATOR,	*	
FEDERAL AVIATION ADMINISTRATION,	*	
	*	
Complainant,	*	
v.	*	Docket No.: SE-31184
	*	JUDGE FUN
JASON T. LOUGHREY,	*	
	*	
Respondent.	*	

via Zoom videoconference

Thursday,
October 19, 2023

The above-entitled matter came on for hearing, pursuant to notice at 12:00 p.m. Eastern Time.

BEFORE: DARRELL L. FUN
Administrative Law Judge

APPEARANCES:

On behalf of the Acting Administrator:

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I N D E X

I N I T I A L O R A L D E C I S I O N

(12:06 p.m.)

COURT REPORTER: We are on the record.

MR. LAMONACA: Good morning, Judge.

JUDGE FUN: Today is October 19th of 2023, and I'm issuing my Oral Initial Decision pursuant to the Board Rules in the matter of Polly Trottenberg, the Acting Administrator for the Federal Aviation Administration, versus Jason T. Loughrey, Docket No. SE-31184.

Pursuant to notice this case proceeded to a hearing on the merits with evidence and arguments presented on October 17th and 18th during a virtual hearing using a Zoom program with the parties' consent.

Representing the FAA is Benjamin D. W. Crumm, an attorney with the Transportation Aviation Litigation Division, the Midwest Team.

The Respondent was present throughout the hearing and was represented by Mr. Joseph M. Lamonaca, an attorney at law.

Free State Reporting provided the court reporter for these proceedings, who is Ms. Darlene Engel.

The parties were afforded a full and fair opportunity to offer evidence, to call and examine witnesses, and to make arguments in support of their position. My decision is based on the evidence presented during the hearing as well as the pleadings in this matter. While I will not discuss all of the evidence in

detail, I've considered all of the evidence, both oral and documentary, that was presented and admitted.

Any matters or evidence which I do not specifically mention or discuss was viewed by me as being cumulative, corroborative, or as not materially affecting the outcome of my decision.

The parties agreed upon and submitted a Joint Stipulation of Facts and Exhibits, which was admitted as Exhibit ALJ-1.

Pursuant to this Joint Stipulation, the following exhibits were admitted into evidence, A-1 through A-21, and R-1 through to R-7.

I took judicial notice of the relevant regulations and cases that were cited in the Complaint, and of all pleadings of the parties, including FAA Sanction Guidance in FAA Order 2150.C and the AME Guidance. The AME Guidance has been marked as Exhibit ALJ-2.

The FAA presented testimony of two witnesses, FAA Special Investigator Heather C. Sullivan, and the FAA Medical Examiner, or AME, Dr. Eric O. Shreder.

Respondent's counsel presented the testimony of Respondent, Jason T. Loughrey, and his mother, Julie A. Loughrey, who all -- also testified.

All witnesses testified under oath.

Most of the basic facts are undisputed and are set forth in the Joint Stipulation, along with the testimony of Special Agent Sullivan, Dr. Shreder, Respondent, and his mother, Ms. Loughrey.

As an aside, I note that the Complaint and the parties refer to DUI, which generally refers to driving under the influence. However, court records referred to DWI, or driving while impaired or driving while intoxicated. While the two terminologies are technically different, they functionally mean the same thing under the FARs and do not materially affect this decision. For purposes of consistency, I will refer to DUI.

In any event, the undisputed facts show the following.

Respondent holds a commercial pilot certificate and an airman medical certificate. Respondent was convicted of DUI in January of 2011; and had his driver's license revoked as a result of that conviction. Respondent was arrested for a DUI in November of 2012 and was subsequently convicted in February of 2014, and also had his driver's license revoked a second time.

Respondent did not report either his 2011 or 2012 DUIs or related driver's license revocations as required by 14 CFR Section 61.15(e), which requires certificate holders to provide a written report of each motor vehicle action to the FAA's Civil Aviation Security Division within 60 days.

"Motor vehicle action", as defined in Subparagraph (c), includes convictions and driver's license suspensions for driving while intoxicated by or impaired by or under the influence of alcohol.

When Respondent applied for an airman medical certificate in November of 2021, he did so electronically and while in the lobby

of Dr. Shreder's office and shortly before the appointment.

When completing his medical application, FAA Form 8500-8, Respondent answered "yes" to Item 18.v. Item 18.v. asked whether he has ever had in his life a history of any arrest and/or conviction involving driving while intoxicated by or impaired by or under the influence of alcohol, or a history of any arrest, conviction, and/or administrative action involving an offense that resulted in the revocation of his driving privileges.

In the Comment section for Item 18.v. Respondent indicated "DUI 2001." He did not indicate he had more than one DUI on the application. Respondent admitted that he was aware of and knew that he had two DUIs approximately ten years ago. However, he testified that he was confused by how much and what information he needed to put on the form. So he planned to bring it up during his medical examination. He then submitted the form electronically.

It is undisputed that answers to Item 18.v. are material in determining one's eligibility for an airman medical certificate, and an omission or lack of disclosure of information on Item 18.v. may result in an incorrect medical certificate disposition.

It is further undisputed that Respondent, during the medical examination, informed Dr. Shreder that there was an error in the reporting of a 2001 DUI on his application. These facts are proven by a preponderance of the credible, reliable, and probative evidence as shown through witnesses' testimony and the exhibits

and Joint Stipulation.

What is disputed is what actually occurred during the medical examination. More specifically, it must be resolved whether Respondent told Dr. Shreder he had two DUIs or whether he only told him that the date of the 2001 DUI on his application was an error.

As a related issue, what happened after the medical examination must also be analyzed since it was disputed that Respondent -- excuse me -- since it was undisputed that Respondent, upon request of Dr. Shreder, brought records consisting of 14 pages that contained information for two DUIs from 2011 and 2012.

Mrs. Loughrey testified that she gathered the records from her files at home and e-mailed them to Respondent at his request after the medical examination. The records included information on both DUIs. There is no reason to question her testimony in this regard as it is consistent with the Respondent's testimony that he took all 14 pages to Dr. Shreder's office. And, it is consistent with Dr. Shreder's admission that he did receive these records.

Briefly turning to the regulatory violations alleged in the Complaint. I will first address 14 CFR Section 61.15(e). Subsection(e) requires certificate holders to report motor vehicle actions within 60 days. It is undisputed that Respondent's two DUIs and resulting driver's license revocations were reportable as

motor vehicle actions and that he failed to report them as required.

As I already mentioned, subsection(c) defines motor vehicle actions. As for subsection(d), this provision provides that a motor vehicle action occurring within three years of a previous motor vehicle action is grounds for denial of any certificate for one year, or suspension or revocation of any certificate issued under Subpart 61.

I, therefore, find by a preponderance of reliable, credible, and substantial evidence proves a violation of Subsections (e) and (d) of Section 61.15 as alleged in the Complaint.

Turning to Subsection (a)(1) of 14 CFR Section 67.403, this regulation prohibits a person from making or causing to be made a fraudulent or intentionally false statement on any application for a medical certificate.

As noted in the case of Hart versus McLucas, the offense of making a fraudulent statement is distinct and separate from the offense of making an intentionally false statement.

The Hart case is found at 535 F.2nd, 516, which is a Ninth Circuit Court of Appeals case from 1976.

To prove intentional falsification under Hart versus McLucas, a three-prong test is used. The test requires the FAA to prove: One, Respondent made a false representation; two, that the false representation was in reference to a material fact; and, three, Respondent knew of the falsity.

While the offense of a fraudulent statement shares the same first three elements as the offense of intentional falsification, fraud requires proof of two additional elements. To prove fraud there must also be proof of intent to deceive and proof of action taken in reliance upon the misrepresentation. In short, as noted in Hart v. McLucas, the regulation proscribes two overlapping but nevertheless separate offenses, one involving fraud and the other involving intentional falsity.

As it pertains to the particular circumstances in this case, the issue is whether Respondent either made a fraudulent statement or, alternatively, made an intentionally false statement on his 2021 application for a medical certificate. The focus of this inquiry is whether his failure to disclose the two DUIs when responding to Item 18.v., as well as his certification on Item 20 was false.

For a separate offense of fraud, there must be additional proof that he intended to deceive and that an action was taken in reliance upon the misrepresentation.

As is shown on the application, which is at Exhibit A-4, Respondent honestly and accurately responded "yes" to Item 18.v. However, on the continuation sheet, which asks for an explanation, he stated "18.v., DUI 2001." He testified that this was incorrect and that he had two DUIs and neither were from 2001.

Although he explained that he did not know what information to put down and did not -- and was confused about all of the

information being asked about on Item -- excuse me. Let me say that again.

Although he explained he did not know what information to put down and was confused about all of the information being asked about on Item 18.v., and planned on bringing up his two DUIs with the AME, the actual statement on the application of "DUI 2001" is false. His testimony as well as the Joint Stipulation admit to the falsity of this statement.

Similarly he certified in Item 20 that all statements and answers he provided were complete and true to the best of his knowledge. As Respondent admitted, he was aware that he had two DUIs approximately ten years ago and that the date of 2001 was a mistake of which he informed his AME. While these facts are relevant for purposes of the third prong of the Hart versus McLucas test, which I will discuss later, the certification at Item 20 that the response of DUI 2001 was true was not, in fact, true. Consequently, the first prong of the Hart versus McLucas test is satisfied by the weight of the credible, probable, and reliable evidence.

Moving to the second prong of the Hart versus McLucas test, it is undisputed that the answer to Item 18.v., included any explanation and response to a positive answer on the second page of the application is material. Board precedent is unambiguous that the information provided on applications for an airman medical certificate is material and all questions on a medical

application are material because they are capable of influencing the FAA's decision on whether to issue a certificate.

While there are multiple cases, I will just provide two that address this materiality, which are Administrator versus Taylor found at NTSB Order No. EA-5611 from 2012, which is affirmed sub nomine in Taylor versus Administrator by the DC Circuit Court of Appeals in 2013, and a case of Administrator versus Byrd, B-y-r-d, at NTSB Order No. EA-5782 from 2016.

It is also undisputed that Respondent was issued a medical certificate. Unquestionably, the FAA bears some fault for this since Dr. Shreder's -- since Dr. Shreder failed to fully review the documents he requested from the Defendant before giving him a medical certificate. Dr. Shreder admitted that he had reviewed no more than just the top page, and based upon his review of the top page, he issued the medical certificate.

He also admitted that if he had reviewed the full 14 pages, he would have deferred the issuance of the medical certificate. However, I will further discuss the implications of these unusual circumstances later in my decision.

For purposes of the Hart versus McLucas analysis, the reliable, probative, and substantial evidence shows that the AME relied on the incorrect statement on Page 2 of his application that was in response to Item 18.v., as well as -- excuse me -- as well as his response and his certification in Item 20. His answer and certification were material because he did issue a certificate

based on the false information and certification.

As Dr. Shreder stated, if Respondent had disclosed a second DUI on his application, it would have been deferred, and he would not have issued the medical certificate at that time. As such, the second prong of the Hart versus McLucas test is met since the false representation is in reference to a material fact.

The third prong of the Hart versus McLucas depends upon significantly -- excuse me.

Third prong of the Hart versus McLucas test significantly depends on a credibility determination of whether Respondent intended to falsify his answer to Item 18.v. by omitting the fact that he had two DUIs and corresponding driver's license revocations.

Because it is difficult to discern a person's true intent at any point in time, I considered the totality of the evidence, both direct and circumstantial. This included considering Respondent's testimony and his understanding, along with the surrounding facts and circumstances, as well as the testimony of Dr. Shreder, Special Agent Sullivan, and Mrs. Loughrey and the exhibits.

At the outset I note that this is not a case where Respondent alleges that he forgot about having the reportable information such as in the case of Administrator versus Johnson at NTSB Order EA-5904 from 2022. Nor does he allege that he was unaware of the DUIs like the case of Administrator versus Schilmoeller, spelled S-c-h-i-l-m-o-e-l-l-e-r, at NTSB Order No. EA-5823 from 2017. It

is also not a case where Respondent alleges that he did not understand or was confused by the question such as in the case of Administrator versus Dillmon, D-i-l-l-m-o-n, at NTSB Order No. EA-5528 from 2010. And it is not a case where Respondent contends he did not subjectively understand what the question meant as in the case of Singleton versus Babbitt. S-i-n-g-l-e-t-o-n and Babbitt is B-a-b-b-i-t, at 588 F.3rd 1078 from the DC Circuit Court of Appeals in 2009.

Finally, it is not a case of Respondent failing to read the question or failing to read it careful such as the case of Administrator versus Boardman at NTSB Order No. EA-4515 from 1996, and Administrator versus Cooper at NTSB Order No. EA-5338 from 2010, which the DC Circuit denied on petition for review at 660 F.3rd 476 in 2012. Instead, this is a case where Respondent correctly answered yes to Item 18.v. but incorrectly indicated that he had a single DUI in 2001 with a stated plan of informing the AME of an error.

The central issue is whether he fully disclosed the existence of two DUIs or omitted full disclosure of both DUIs. Respondent contends he told the AME about having two DUIs, while Dr. Shreder states Respondent said he only had a single DUI and corrected the date to 2011.

Respondent explained that he was unfamiliar with the process of seeking an airman medical certificate since he last obtained a medical certificate in 2007 and had not flown since then. He

stated that when he went to his AME appointment, he did not know that he needed to complete an on-line application so he did so in the doctor's office. Although he knew he had two DUIs, he testified he did not know how or what information to disclose on the application, or how to list two DUIs, or what was needed, so he stopped after only listing one. He further stated he mistakenly put 2001 and meant to put 2011 since his DUIs occurred approximately 10 years ago.

On the other hand, Dr. Shreder testified that since Respondent reported a DUI, he used the Alcohol Incident list as a checklist, which is at Pages 7 and 8 of Exhibit A-18. Dr. Shreder says he goes over this checklist with the airman to determine whether it is a single DUI and whether it was less than five years or more than five years ago. In this instance, since Respondent reported a single DUI that was more than five years ago, he used the evaluation data under Condition B which would allow him to issue a medical certificate. However, Dr. Shreder withheld the certificate because he wanted to verify that the BAC was less than .15. So he told Respondent to get the police report, court records, and BAC information and bring it to his office.

Although Dr. Shreder confirmed that Respondent told him that the 2001 DUI was a mistake, Dr. Shreder cannot recall any specific details other than that the date was in error. However, Dr. Shreder noted that if Respondent had disclosed two DUIs, he would have had to defer and submit the information to the FAA.

This is a classic case of conflicting testimony between two opposing sides which requires me to evaluate all of the circumstances and evidence, and weigh the credibility of witnesses. In this regard, I find Dr. Shreder's testimony credible, believable, and consistent with the overall evidence. Dr. Shreder is a senior AME with a license in osteopathic medicine with a residency in family practice medicine. He has been a senior AME since 2003 and a HIMS, or Human Intervention Motivation Study, AME for 10 years. He's experienced in performing airmen medical examinations and used the Alcohol Incident list when airmen report a history of alcohol-related events.

He credibly testified that he took contemporaneous notes during this medical examination, writing down what the airman reported. These notes are on Page 2 of Exhibit A-18, which confirm that there was a positive response to Item 18.v., with a report of a single 2001 DUI, and Respondent indicated it was the only incident in his lifetime.

His notes further indicate that Respondent reported that the DUI occurred in Minnesota, Ramsey County, and he was on his way home from a bar. The notes reflect "BAC?" and "0.11 percent", with a further notation of no loss of license and interlock for two years and MADD class. Dr. Shreder on the right side of his notes noted "need BAC" and circled it. Dr. Shreder testified that this meant he needed to confirm that the BAC was below .15 since Respondent was uncertain of the BAC. Thus, Dr. Shreder's

contemporaneous notes were consistent with his testimony that Respondent reported a single DUI event in his lifetime.

Respondent points out significant problems and inconsistencies. First Respondent points out that he brought records to Dr. Shreder consisting of 14 pages which included records for both the 2011 and 2012 DUIs. Dr. Shreder had requested records, and Respondent brought the records within a few days after the medical exam, which Dr. Shreder confirms.

However, Dr. Shreder conceded that he did not review all 14 pages and that he only looked at the top page to confirm that the BAC was below .15. He explained that his staff brought him the records, which were "stuck under my nose between patients" while he was in the hallway. He saw the top page, which indicated a BAC below .15, so he released the medical certificate on that basis. Dr. Shreder further admitted that after receiving the records, he did not speak with or review the records with Respondent.

He readily conceded that he should have reviewed all 14 pages but failed to do so until Special Agent Sullivan questioned him about the case in August of 2022. Up until then, he did not know that Respondent had provided documentation disclosing two DUIs since he had not reviewed it.

Respondent argues that these circumstances negate the intent to deceive, the intent to fraud, or the intent to hide the fact that he had two DUIs. Respondent argues that if he had such intent, it's inconsistent with him providing records for both DUIs

when he simply could have only given Dr. Shreder records for the 2011 DUI.

I agree that these circumstances may be inconsistent with an intent to deceive. However, as I've already noted, proof of intent to deceive, while it is an element of a fraudulent statement, is simply not an element required to be proven for intentional falsification under 403(a)(1).

Second, Respondent notes that Dr. Shreder admits to being informed that the 2001 DUI was an error and that the date should have been 2011. Yet as Dr. Shreder conceded, he did not write this down in his notes, nor did he make a mention of it in Item 60 of the application.

Despite Dr. Shreder's failure to document the correction of the date of the DUI in his notes, or in Item 60 of the application, I still find Dr. Shreder's testimony that Respondent reported a single DUI more consistent with the overall evidence. As I noted, Dr. Shreder's contemporaneous notes are consistent with his testimony, and the notes themselves are consistent with Respondent reporting a single DUI.

Significantly, Dr. Shreder readily admitted to his error and failure to document the correction to the date of the DUI. Moreover, even if Dr. Shreder had noted that the DUI was in 2011, it still would have been a single event occurring more than five years ago under Condition B.

Third, Respondent argues that he disclosed that the second

DUI conviction occurred in Ramsey County, which Dr. Shreder documented in his notes. Respondent contends that Dr. Shreder's notation of Ramsey County is consistent with records showing the 2012 DUI for Ramsey County while the 2011 DUI is from Anoka County, spelled A-n-o-k-a, as shown in Exhibit R-5. Thus, Respondent argues -- excuse me.

Thus, Respondent argues that it is reasonable to conclude that he did tell Dr. Shreder about two DUIs because the 2012 DUI is from Ramsey County and Dr. Shreder annotated Ramsey County in his notes. Since Dr. Shreder admitted to being informed that the 2001 DUI listed on the application should be 2011, Respondent contends it can be concluded that the reference to Ramsey County correlates to disclosure of the second DUI.

I do not agree with this leap of logic since it requires multiple assumptions to reach that conclusion. It requires the assumption that Respondent did, in fact, mention two DUIs or that he had a second DUI. It then further requires the assumption that Dr. Shreder failed to write down that Respondent reported a second DUI. It also requires assumption that Dr. Shreder, after learning of the second DUI, blatantly ignored FAA guidance and did not defer the medical certificate under Condition D of the Alcohol Incident checklist. Moreover, it requires the assumption that Respondent clearly remembered the facts and circumstances of both DUIs.

However, I found Dr. Shreder's testimony and contemporaneous

notes showing that Respondent reported a single lifetime DUI more credible. Despite Dr. Shreder's other administrative errors, such as not noting a correction to the 2001 date, or reading the documents Respondent brought to his office, I find it credible that Dr. Shreder would not have ignored a second DUI nor failed to defer issuing a medical certificate if the Respondent disclosed two DUIs during the medical examination.

Further, I give little weight to Respondent's recollection of what he told Dr. Shreder. As Respondent testified, he could not recall any specifics about the DUIs. He could not recall exactly when the DUIs occurred, only that they occurred ten years ago. He could not recall the BACs of either DUI. He could not recall what Dr. Shreder told him during the examination except that he needed to see reports to check if the BAC was within limits.

Given the gaps in Respondent's memory, he likely was only able to recall Ramsey County since that was the location of the last DUI. In addition, Ramsey County likely stuck out in his memory since court records indicate he was sentenced to 335 days incarceration that was stayed for two years, with 30 days of home detention and electronic monitoring. This sentence was greater than the Anoka County sentence of 30 days that was stayed for two years, and would have had a more meaningful impact on Respondent.

It is also notable that his BAC for the 2011 DUI was .13, and his BAC for the 2012 DUI was .16, which also demonstrates his faulty recall during this medical exam since he indicated a .11

BAC to Dr. Shreder.

Further, reading Dr. Shreder's notes in context, it is clear that all of the writings refer to a single DUI and not multiple DUIs. There's no clear reference to a second or multiple DUIs. And, in fact, it clearly indicates that there was only one incident in his lifetime, which Dr. Shreder testified to recalling as well.

I also did not find Respondent's explanation that he was confused or did not know what information to list in response to Item 18.v., credible. I find it incredulous that, given Respondent's background, that he did not have the life experience, knowledge, or foresight to take actions to accurately and correctly report the two DUIs on his application. His explanation that he was confused and unsure how to report the information defies reasonable logic.

As he admitted, he could have annotated two DUIs, multiple DUIs, several DUIs, or even the plural term of "DUIs." Instead he listed DUI 2001, which clearly implied a single DUI. He is a high school graduate and went through accelerated flight training to obtain his commercial pilot's license, instrument rating, and multi-engine rating. Even though he has limited flight experience amounting to 184 hours, he is intelligent enough to start his own business as a building contractor and install underground utilities. While he might have been unfamiliar with the process for applying for medical certificates since the last time he flew

or applied for one was in 2007, it is well within his experience and education to know that he needed to report honestly and correctly his two DUIs on the application, and to Dr. Shreder during the medical examination.

As a result, I find a preponderance of the evidence proves all the allegations in the Complaint. More specifically the totality of the substantial, reliable, and probable evidence shows that at the time Respondent completed his application for medical certification, he knew that his explanations on Page 2 and response to 18.v., and his certification to the truth of the answers in the application were false.

Consequently, all three prongs of the Hart versus McLucas test are met. I find it unnecessary to address the question of whether the intentionally false statement was also fraudulent. The FAA has pled that the Respondent made an intentionally false statement, or in the alternative, a fraudulent statement in his application for a medical certificate. The sanction is the same whether it was an intentionally false or a fraudulent statement. Therefore, it is not necessary for me to address the fourth and fifth prongs to prove a fraudulent statement.

I also find it unnecessary to address Special Agent Sullivan's credibility since her testimony and reports were based on witnesses that testified at the hearing and on documents that were admitted as exhibits. I found her testimony corroborative of Dr. Shreder and of Respondent's contention that the 2001 date for

his DUI was in error. However, to the extent a credibility finding is necessary, I find Special Agent Sullivan's testimony credible, persuasive, and consistent with the overall evidence.

Special Agent Sullivan has 14 years of investigative experience, including experience with the US Air Force, the US Customs Service, and the FAA. She displayed no motive or bias to embellish her findings. Further, her testimony was generally consistent with the reports and testimony of other witnesses.

In summary, I find a preponderance of the evidence shows that Respondent had a history of two DUIs from 2011 and 2012 with corresponding revocations of his driver's licenses. Although he answered yes to Item 18.v. in his application for a medical certificate, he falsely noted having a single DUI, which was false. Similarly, his certification in Item 20 of the application was false.

The preponderance of the evidence further shows that the response to Items 18 and 20 were material because the AME relied upon his answers, along with this medical exam where Respondent indicated that he only had one DUI in his lifetime, when determining to issue him a medical certificate. And the AME did issue a certificate based upon his false response. Finally, a preponderance of the persuasive, reliable, and credible evidence further shows that the response to Items 18 and 20 were false at the time he completed his application.

The remaining allegations following Paragraph 18, and

specifically Paragraphs -- Subparagraphs (a) to (c) and Subparagraphs (a) to (d), cite to relevant regulations and state conclusions of law which do not require factual findings. However, to the extent that findings are required, I find that these allegations accurately reflect the regulatory provisions applicable in this matter.

Consistent with my findings, the FAA has proven all the factual allegations in the Complaint by a preponderance of the reliable, probative, and substantial evidence. I specifically find that the weight of the credible, probative, and reliable evidence proves that the Respondent made an intentionally false statement on his application for an airman medical certificate in violation of 14 CFR 67.403(a)(1).

For purposes of making a separate finding with regards to 14 CFR 67.403(c) a preponderance of the same evidence proves that Respondent made an incorrect statement in support of an application for a medical certificate upon which the FAA relied. More specifically, that he only had a single DUI when, in fact, he had two DUIs.

Finally, as I have previously noted, it is undisputed that Respondent that a portable -- had reportable motor vehicle actions, and he failed to report them within 60 days as required by 14 CFR 61.15(e). Further, Respondent had a motor vehicle action occurring within three years of a previous motor vehicle action in violation of subsection (d) of 61.15.

Consequently, I find that a preponderance of the reliable, credible, and substantial evidence proves a violation of subsections (e) and (d) of Section 61.15 as alleged in the Complaint.

As the FAA has establish a prima facie case, I now turn to Respondent's Affirmative Defenses. In addition to Respondent's answer, he made several arguments and statements. I've already addressed some of Respondent's arguments in detail and adopt my analysis for the purposes of evaluating Respondent's affirmative defenses. I, therefore, will not repeat my analysis in detail.

Respondent points out that he provided records showing he had two DUIs to Dr. Shreder a few days after the medical examination. As Dr. Shreder testified, he requested records to confirm that the BAC for the DUI Respondent had disclosed was under .15. Dr. Shreder further confirms that Respondent did bring the records, but he only looked at the top page and did not review the 14-page document before releasing the medical certificate he was holding.

The fact that Dr. Shreder did not review the records Respondent provided to him before releasing the medical certificate is very concerning.

First, Dr. Shreder testified that he had already prepared the medical certificate and was holding it until he could confirm that the BAC was below .15. It is questionable whether an AME can backdate or authorize a medical certificate when an airman is

requested to provide documents that might ultimately lead to a decision other than an issuance.

Second, the fact that Dr. Shreder did not even take the time to look at what an airman provided in response to his request for documentation calls into question his exercise of care, judgment, and responsibility as an AME. It is particularly troublesome when the FAA consistently demands that airmen exercise a degree of care, judgment, and responsibility of a certificate holder and requires the airman to scrupulously provide accurate and complete information, but then the FAA itself fails to adhere to the same standard it expects of airmen. Such a double standard is not reasonable.

Third, as Dr. Shreder admits, if he had reviewed the documents, he would not have issued a release of the medical certificate. In this regard, Respondent argues that in absence of a medical certificate being issued or released, there would not have been a falsification case, and a need to revoke his medical certificate could have been avoided. This, however, is speculative since the medical certificate was issued, and it was issued based on Respondent's answer to -- on the application indicating to the AME that it was a single DUI. Thus, the violation of making a false statement was completed irrespective of whether Dr. Shreder released the medical certificate or not. Moreover, whether the FAA could or should have taken a different approach to enforcement is a matter of prosecutorial discretion.

Fourth, Respondent points out that the FAA's guidance for the aviation medical examiners allow for the AME to change or correct the information in the application. The guide states that if the AME discovers a need for corrections to the application during review, the AME is required to discuss these changes with the applicant and obtain their approval. Respondent argues that if the AME had received the records Respondent brought to him -- Respondent argues that if the AME had reviewed the records the Respondent brought to him, the AME would have discovered the need for corrections and possibly averted the enforcement action. However, the guide prefaces this guidance with stating that the applicant cannot make updates to their application once they have certified and submitted it.

It also suggests that the applicant discloses relevant information, such as having two DUIs during the AME's review of the application, which Respondent did not do. In this instance the AME had conducted a review with the Respondent, and his request for records was not necessarily for review of the application, but to gather information regarding the incident, confirm that the BAC was below .15, summarize the information in Item 60, and submit the information to the FAA for file retention.

Furthermore, despite the AME's failure to fully review the medical records before the releasing the medical certificate, it would defeat the spirit and intent of the FARs to allow the Respondent to retain his medical certificate when, in fact, it

shouldn't have been issued in the first place. This is because the overarching purpose of the FAA regulations is to ensure the safety in air transportation and commerce and the public's interest, ensuring that individuals do not lack the necessary qualification of care and judgment and responsibility to hold a certificate. While much of the enforcement scheme places the burden on the certificate holders and applicants to provide truthful, complete, and accurate information, allowing certificate holders to maintain their certificate and qualifications would place an unsustainable burden on air safety and a life of human -- excuse me. Let me rephrase that again.

While much of the enforcement scheme places the burden on certificate holders and the applicants to provide truthful, complete, and accurate information, allowing certificate holders to maintain their certificate and qualification despite a violation would place an unsustainable burden on air safety and on limb and life.

Therefore, despite the AME's failings, I reject Respondent's suggestion that the EOR should be dismissed or that he should suffer no sanction because he was issued a medical certificate despite providing the AME with the records for two DUIs. Consequently, I deny these arguments as an affirmative defense.

Turning to Respondent's First Affirmative Defense that the Complaint is stale since the allegation occurred more than six months prior to the Emergency Order of Revocation, Board Rule

33(d) states that in cases where the complaint alleges a lack of qualification, I am first to determine whether the issue of a lack of qualification would be presented if all of the allegations, stale and timely, are assumed to be true. If I determine an issue of lack of qualification is presented, then the motion to dismiss for staleness is denied.

The DC Court of Appeals in the case Administrator versus Ducote, D-u-c-o-t-e, found at 792 F.3rd 144 from 2015, notes that the term "lack of qualification" is a term of art that refers to regulatory violations that by their very nature warrant revocation. These are offenses that raise a significant question as to whether an airman continues to possess the care, judgment, responsibility, knowledge, or technical ability required by his or her certificate. As stated in the case of Thunderbird Propellers, Incorporated, versus FAA found at 191 F.3rd 1290 from 1999, it goes beyond technical proficiency and includes offenses showing a lack of judgment and integrity.

In this case, lack of qualification is clearly raised. The Complaint alleges Respondent lacked the qualifications necessary to hold the required -- a commercial pilot certificate or airman medical certificate. Moreover, as stated in Administrator versus McCarthney, spelled M-c-C-a-r-t-h-n-e-y, a 1990 case found at 7 NTSB 670, "Board precedent firmly establishes that even one intentional falsification compels the conclusion that the falsifier lacks the necessary care, judgment, and responsibility

required to hold any airman certificate."

Board precedent also firmly establishes that the appropriate sanction for a particular falsification on an application for a medical certificate is revocation of Respondent's medical certificate and all other airman certificates. There are several Board cases that state this, including Administrator versus Martinez, NTSB Order No. EA-5409 from 2008, Administrator versus Butchkosky, B-u-t-c-h-k-o-s-k-y, NTSB Order No. EA-4459 from 1996, and Administrator versus Bodovinitz, spelled B-o-d-o-v-i-n-i-t-z, NTSB Order No. EA-4179 from 1994, to name a few.

Because the FAA alleges a lack of qualifications based upon intentional falsification, which is proven by a preponderance of the evidence after a hearing on the merits, I conclude that the stale complaint rule does not apply. Consequently, I deny Respondent's First Affirmative Defense.

Respondent's Second Affirmative Defense asserts laches in that undue delay and lack of diligence by the FAA caused him prejudice. Respondent presented no evidence of how he was prejudiced. Respondent argued that Dr. Shreder's memory of the events are questionable given the passage of time and the fact that he was a busy physician. However, Dr. Shreder's memory was largely intact. His testimony was consistent with his contemporaneous notes. I find that Respondent has not proven he suffered actual prejudices such that he's entitled equitable relief pursuant to laches. In order for the Respondent to succeed

based upon the doctrine of laches, Respondent must establish both a lack of diligence by the FAA in bringing an action and that he suffered actual prejudices as a result of such delay.

Respondent does not contend that the delay somehow prevented from him mounting an effective defense, such as locating critical witnesses, recovering important evidence, or documenting fading memories that would enhance his ability to defend against the enforcement action. Instead, he alleges that Dr. Shreder's memory was impaired or his notes are incomplete. However, as previously discussed in detail, Dr. Shreder testified credibly, and honestly admitted his failure to review the records that were submitted. Other than vague and conclusionary assertions, Respondent provided no evidence showing exactly how he was actually prejudiced in his ability to present a defense.

Because Respondent has not shown he has suffered actual prejudice, it is unnecessary to analyze the degree of diligence exercised by the FAA in pursuing an enforcement action. Nevertheless, I observe that Respondent has failed to establish a lack of diligence on the FAA's part in seeking enforcement.

There's no evidence that a 13-month delay was due to a lack of diligence. In cases where the Board has found the FAA lacked diligence include a 10-year delay in Manin versus NTSB found at 627 F.3rd 1239, a DC Circuit Court of Appeals from 2011; a five and-a-half year delay, in Administrator versus Zaia, Z-a-i-a, at NTSB Order No. EA-5739 from 2015; and a three-year delay in

Administrator versus Tinlin and White, an NTSB Order EA-5658 from 2013.

While the length of the passage of time is dependent on the circumstances of each case, I find that a 13-month passage of time in this case is not unreasonable. Thus, in addition to failure to establish any prejudice, I also find that Respondent failed to establish that the FAA did not diligently pursue the case against him. As a consequence, I find that the doctrine of laches does not apply as the Respondent failed to demonstrate actual prejudice and lack of diligence by the FAA. Therefore, I reject the affirmative defense of laches.

Respondent's Third Affirmative Defense is that he reasonably relied on the AME. More specifically, Respondent contends that he relied on the fact that he provided Dr. Shreder with the records of both his DUIs, which Dr. Shreder did not fully review, yet Dr. Shreder nonetheless issued him a medical certificate.

More importantly, Respondent’s reliance was not reasonable. As he testified, he was aware that his DUIs would affect the decision on whether he would obtain a medical certificate. It was also undisputed that Dr. Shreder showed Respondent the Alcohol Incident list, which he uses as a checklist to evaluate whether a medical certificate could be issued or had to be deferred. The Alcohol Incident list shows that disclosure of two DUIs requires deferral, and Respondent did not dispute this or that Dr. Shreder used the Alcohol Incident list.

Finally, as the Board has stated in the Application of Raymond L. Keith, the doctrine of reasonable reliance is a narrow one, and its application cannot be found unless Respondent proves he does not have an independent obligation under the regulations. Keith is found at NTSB Order No. EA-5223 from 2006.

In this case, given the totality of the circumstances, Respondent is not absolved of his independent obligation to accurately and fully disclose his two DUIs on his application. Although he argued he disclosed them to the AME during the medical appointment, I do not find his testimony credible or consistent with the overall evidence in that regard. While he did provide records to the AME that contained information about his two DUIs, an airman cannot merely provide records hoping that it would correct a prior falsification or, perhaps, go unnoticed that the records are inconsistent with what he stated in his application.

Consequently, I reject Respondent's Third Affirmative Defense as he has not demonstrated he does not have an independent obligation under the regulations, nor did he demonstrate how he has been prejudiced.

As for Respondent's Fourth Affirmative Defense, which was a Motion to Dismiss for failure to provide him with a certified Blue Ribbon Medical File with the EOR, Respondent withdrew this defense and motion at the outset of the hearing. As a result, it is not necessary for me to address it.

In summary, Respondent provided no convincing, credible,

persuasive evidence affirming his arguments and affirmative defenses. I, therefore, find no merit in the defenses either individually or in combination.

I further find that Respondent failed meet the burden of proving affirmative defenses by a preponderance of the evidence.

As the Administrator has proven that Respondent violated regulations, and Respondent has failed to prove his affirmative defenses by a preponderance of the evidence, I now turn to the sanction in this matter.

Making an intentionally false statement on an application for a medical certificate is grounds for revocation or suspension of any airman, ground instructor, a medical certificate under 14 CFR Section 67.403(b) and (c). Whether revocation or suspension is warranted is a mixed question of fact and law.

The FAA requests revocation of Respondent's commercial pilot certificate and medical certificate and any unexpired certificates based on safety in air commerce and air transportation, as well as public interests.

Respondent, on the other hand, suggests that no sanction is appropriate and that the Emergency Order of Revocation should be reversed or dismissed or reduced -- or the penalty should be reduced to suspension.

On August 3rd, 2012, Public Law 112-53, known as the Pilot's Bill of Rights, was signed into law. This statute applies to all cases where the National Transportation Safety Board reviews the

Acting Administrator's decision to deny airmen medical certification or to amend, modify, or suspend airman certificates under 49 United States Code Section 44709.

The Pilot's Bill of Rights specifically strikes language from Sections 44703, 44709, and 44710 of Title 49. The stricken language bound the Board to all validly adopted interpretations of law and regulations the Administrator carries out unless the Board found the interpretation is arbitrary, capricious, or otherwise not according to law. Because this language is stricken, I am no longer bound to give deference to the FAA by statute.

However, that Agency is still entitled to some weight in determining a sanction under the Supreme Court's decision in American Power & Light Company versus the Securities and Exchange Commission, at 329 US 90, from 1946. This standard was affirmed in the DC Circuit Court of Appeals in the case of Pham, P-h-a-m, versus NTSB, which is found at 33 F.3rd 576 from 2022.

I think I mis-cited that. It's 33 F.4th 576 from 2022.

The Board has since held and affirmed that it is to manifest proper deference to the FAA's sanctions -- excuse me. The Board has since held and affirmed that it is to manifest proper deference to the FAA's sanction choice and review it only for justification in law and fact. The Board's decision in Administrator versus Pham is found at NTSB Order No. EA-5936 from 2022. Therefore, I must determine whether the FAA's choice of remedy is unwarranted in law or is without justification in fact.

In applying the principles of judicial deference to the interpretations of law, regulations, and policies that the FAA carries out, I must analyze and weigh the facts and circumstances in each case to determine if the sanction is appropriate.

The FAA argues revocation as the appropriate sanction and urges the Court to give deference to its choice of sanction as well as Board precedent that upheld revocation as a sanction in cases of intentional falsification.

Respondent argues that this case presents a unique and unusual set of circumstances, suggesting that no sanction or a lesser sanction is appropriate. I've considered Respondent's arguments and affirmative defenses for purposes of mitigation.

I listened carefully to witness testimony and evaluated the evidence. As I previously discussed, there is no question that the AME failed in his obligation to review the records Respondent provided to him. However, as noted, the AME's failure to document a correction to the date and a failure to review the records before issuing the medical certificate does not detract from the fact that the Respondent indicated he had a single DUI on his application, and confirmed having a single DUI in his lifetime during the medical examination. At that point, the intentional falsification had occurred. I, therefore, do not find Respondent's arguments and explanations credible, rational, or persuasive. Nor do I find his testimony logically consistent with the totality of the evidence.

Moreover, the Board has made it clear that in cases involving intentional falsification of an application for a medical certificate, revocation is appropriate for all airman certificates held and not just the medical certificate. As the Board has explained in Administrator versus Barry, a 1998 case found at 6 NTSB 185, the offense of falsification "is sufficiently damaging to the airman certification process so as to pose a substantial risk and threat to aviation safety."

Therefore, under these circumstances and after considering any aggravating and mitigating factors, I do not find the FAA's choice of sanction as being unwarranted in law or without justification in fact. Revocation is authorized, and I find the sanction of revocation is justified by a preponderance of the credible, probative, and reliable evidence in this case. Nor do I find the sanction to be arbitrary, capricious, or not in accordance with the law. Instead, it is consistent with Board precedent and affords appropriate judicial deference to the FAA. Revocation is further warranted in the public's interest and in the interest of air commerce and air safety.

Consequently, I find that the Emergency Order of Revocation must be and shall be affirmed.

I now ask the court reporter to start a new page with my order on a separate page.

ORDER

JUDGE FUN: It is, therefore, ordered that the Acting Administrator's Emergency Order of Revocation which serves as the Complaint is affirmed:

One, as to a violation of 14 CFR Section 67.403(a)(1) for making an intentionally false statement in his application for a medical certificate, an incorrect statement that the FAA relied upon when it issued an airman medical certificate.

Two, as to violation of 14 CFR 67.403(c) for making an incorrect statement in support of an application for a medical certificate and upon which the FAA relied upon when it issued Respondent an airman medical certificate.

Three, as to a violation of 14 CFR Section 61.15(e) for failing to report to the FAA, the Civil Aviation Security Division, the occurrence of a motor vehicle action within 60 days.

And, four, as to a violation of 14 CFR Section 61.15(d) for having a motor vehicle action that occurred within three years of a prior motor vehicle action.

It is further ordered that Respondent's commercial pilot certificate, certificate number ending in 8471, and his airman medical certificate, as well as any other unexpired airman certificates he holds, are hereby revoked.

It is further ordered that no application for a new certificate under 14 CFR Part 61 shall be accepted nor any certificate be issued for a period of one year beginning on

January 6th, of 2023.

So entered this 19th day of October 2023 in Denver, Colorado.

DARRELL L. FUN

Administrative Law Judge

APPEAL

JUDGE FUN: All right. Now, either party has the right to appeal my decision if you believe I've made an error in law or procedure.

This morning my assistant sent both parties advising the parties the right to appeal.

Have both parties received this written advisement?

MR. CRUMM: Yes, Your Honor.

MR. LAMONACA: Yes, Your Honor.

JUDGE FUN: Counsel, do either one of you wish me to further advise you or your client of the right to appeal? Or do you intend to advise your client as appropriate?

MR. LAMONACA: Judge, I will advise my client as appropriate.

And just as a clarification, which I -- would like to put today, we are operating under the nonemergency rules for this appeal -- and it is my understanding we're operating under the nonemergency rules for this appeal. Both notice of appeal and the 15-day briefing schedule.

JUDGE FUN: That is correct, Mr. Lamonaca.

As I mentioned, either side has the right to appeal my decision if you believe I have made an error in law and procedure, and I encourage you to do so.

Although you were provided a written advisement, I must emphasize that you must file your notice of appeal within ten days of my Oral Initial Decision which I have just issued.

Any notice of appeal is filed with the Office of Administrative Law Judges and simultaneously served on the other opposing party.

You must also perfect your appeal within 50 days of my initial oral decision. Any brief in support of your appeal must be filed directly with the Office of General Counsel and simultaneously served on FAA counsel.

If either side decides to appeal my decision, which is your right to do so, please pay attention to those deadlines of filing requirements. The time limits and filing requirements are strict, and the Board will not hear any untimely or misfiled appeal absent extraordinary circumstances.

I further note that the parties will receive a copy of the transcript of the hearing testimony and my Oral Initial Decision. Therefore, it is not necessary to contact the court reporter for a transcript as you will be provided a copy when it has been transcribed and certified. However, please take note that you might not have the transcripts within ten days so you must file your notice of appeal without the benefit of the transcript if you intend on appealing.

All right. Are there any other procedural or administrative matters that we need to discuss before we close this matter?

MR. LAMONACA: Nothing, Judge.

MR. CRUMM: We have nothing either, Your Honor.

JUDGE FUN: Therefore, I'll consider this matter concluded,

and we'll go off the record, and we are adjourned.

(Whereupon, at 1:23 p.m., the hearing in the above-entitled matter was concluded.)

CERTIFICATE

This is to certify that the attached proceeding before the

NATIONAL TRANSPORTATION SAFETY BOARD

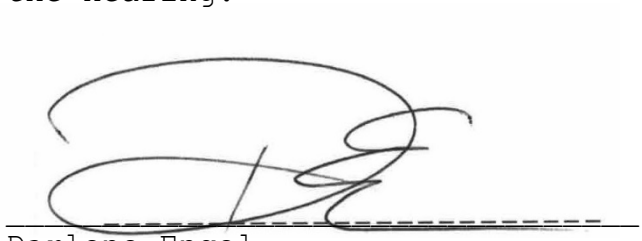
IN THE MATTER OF: Jason T. Loughrey

DOCKET NUMBER: SE-31184

PLACE: via Zoom videoconference

DATE: October 19, 2023

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.



Darlene Engel
Official Reporter