Aviation Medical Examiner Program

Legal Aspects of Medical Certification

Chris Stevenson, Attorney Enforcement Division, AGC-300 Office of Chief Counsel
Introduction

• Objective: Provide a Basic Understanding of the Legal Issues and Procedures Affecting the Medical Certification Process
Topics of Discussion

- Legal Aspects of the Application and Certification Process
- Options Available to Applicant Who Is Denied Medical Certification
- Falsification
- Liability Issues
- Address Questions/Concerns
Legal Aspects of the Application and Certification Process

• AME Makes Initial Determination of Medical Qualification
AME Makes Initial Determination

• Understand the Application
• Obtain Complete Medical Information to Better Make this Determination
• Ensure that Applicant Understands the Application
• Carefully Review the Application and Complete the Examination
Pilot’s Bill of Rights Written Notification Requirements

- Pilot’s Bill of Rights (“PBR”) Enacted August 3, 2012
- PBR Requires Timely Written Notification to an Individual Who is the Subject of an Investigation Relating to the Denial of an Airman Certificate
- Consistent with the PBR, the FAA Provides Written Notifications with the Application for an Airman Medical Certificate
Pilot’s Bill of Rights Written Notification Requirements

• As Part of the Application for Airman Medical Certification, the Applicant is Provided Written Notification that:
  – The Nature of the Administrator’s Investigation is to Determine Whether the Applicant Meets Standards for Airman Medical Certification;
  – Any Response May be Used as Evidence Against the Applicant; and
  – The Applicant is Entitled to the Releasable Portions of the Airman Medical File
Options Once Examination is Complete

• Issue the Medical Certificate
• Defer the Application to the FAA
• Deny the Application
Issue the Medical Certificate

• Your Decision to Issue the Medical Certificate Is a Final Determination of Medical Qualification if the FAA Does Not Act within 60 Days of Issuance

• Promptly Provide Application, Examination Results, and Other Information to FAA for Timely Review
Issue the Medical Certificate

• Significance of 60 Days
  – FAA can Deny Application if It Acts within 60 Days
  – Shifting Burden of Proof
Defer the Application

• Defer Application When Reasonable Doubt Exists as to Medical Qualification

• Provide Application, Examination Results, and Other Information to FAA for Review
Defer the Application

• FAA Will Determine Whether to Issue, Deny, Grant Authorization for Special Issuance Medical Certificate, or Request Additional Information
Deny the Application

- Denial by AME is Not a Final Denial for Purposes of Seeking NTSB Review
  - Provide Application, Examination Results, and Other Information to FAA for Review
  - FAA Will Review the Denial
Deny the Application

- Final Denial is Decision by the Federal Air Surgeon or Regional Flight Surgeon
- Three Reasons for Denying Application
  - A Specifically Disqualifying Medical Condition
  - A Generally Disqualifying Medical Condition
  - Failure to Provide Additional Medical Information Pursuant to a Reasonable FAA Request
- The FAA Provides PBR Written Notifications to Applicant When it Requests Additional Medical Information
Options Available After Final Denial of Application

- Accept Denial
- Apply for Authorization for Special Issuance Medical Certificate
  - Federal Air Surgeon’s Discretion
  - Places Restrictions on Medical Certificate
Options Available After Final Denial of Application

• Petition the NTSB to Review the Final Denial
  – Petition Must be from Final Denial of Application
  – Cannot Petition from Denial of Authorization for Special Issuance Medical Certificate
Petition the NTSB to Review the Final Denial

• Role of the NTSB
• Process Before the NTSB
  – Hearing before Administrative Law Judge
  – Appeal to Full NTSB
Appeal from Full NTSB Decision

• Petitioner May:
  – Appeal Full NTSB Decision Directly to a United States Court of Appeals; or
  – Appeal Full NTSB Decision to a United States District Court and, if the Denial is Upheld by the District Court, Appeal to a United States Court of Appeals

• Administrator May:
  – Appeal Full NTSB Decision to a United States Court of Appeals if NTSB Decision has a “Significant Impact” on Carrying out FAA’s Governing Statute
Airman Medical Certification Review and Appeals Process
Falsification of the Application for Medical Certification

• Falsification Prohibited by:
  – Section 67.403(a)
  – Criminal Statute
Two Types of Falsification

• Intentional False Statement
  – A False Representation of a Material Fact
    Made with the Knowledge of Falsity

• Fraudulent Statement
  – A False Representation of a Material Fact
    Made with the Knowledge of Falsity
  – Made with Intent to Deceive and Relied Upon
    by Another
Falsification Consequences

- Can Serve as Basis for Suspension/Revocation of Medical Certificate
- Can Serve as Basis for Suspension/Revocation of Other Airman Certificates
- Criminal Prosecution
FAA Policy Regarding Falsification

- Revocation of Both Medical Certificate and Other Airman Certificate
- Lack of Qualification to Hold an Airman Certificate
What Is the AME’s Role?

• AME’s Role in Preventing Falsification
• AME’s Role in Detecting Falsification
• Incentive to Be Truthful
  – Possibility of Special Issuance
  – Falsification Can Result in Revocation of Medical and Other Airman Certificates
  – Criminal Penalties
Section 61.15(e) Reporting Requirements

• Requires Airman to Report Motor Vehicle Actions to FAA Security w/in 60 days
  – Convictions for DWI/DUI (alcohol and drugs)
  – Alcohol/Drug-Related Cancellation, Suspension, Revocation of Driver’s License
  – Alcohol/Drug-Related Denial of Application for Driver’s License
Two Reporting Requirements for Drug/Alcohol Motor Vehicle Actions

1. Must report on Applications for Airman Medical Certificate (Part of Question 18.v.) and

2. Must Report to FAA Security w/in 60 days
Summary

• Carefully Review Application and Perform Examination

• Quickly Process Application, Examination Results and Other Information

• Defer When Reasonable Doubt Exists as to Medical Qualification

• Be Vigilant for Falsification
Liability During Performance of AME Duties

• Four Areas of Potential Liability
  – Negligent Injury to Applicant During Examination
  – Negligent Denial of Medical Certification
  – Wrongful Certification
  – Disclosure of Medical Information
General Concerns

- Chances of Being Sued are Remote
- FAA cannot represent AME
- Answers to Questions of Liability Vary from State to State
Negligent Injury to Applicant During Examination

- AME May Be Liable for Injury
- Failure to Disclose
  - Although no doctor/patient relationship exists, AME should disclose abnormal findings to Applicant
- Failure to Detect
  - Liability may occur where AME fails to detect medical problem
Negligent Denial of Medical Certification

- AME May Be Liable for Failure to Certify Medically Qualified Applicant
- Deny/Defer When Reasonable Doubt Exists as to Medical Qualification
- Document Reasons for Deferring or Denying Application
Wrongful Certification

- AME May Be Liable for Issuing Certificate to Medically Unqualified Applicant
- Follow AME Guidelines Regarding When to Issue Certificate
- Deny/Defer When Reasonable Doubt Exists
Disclosure Of Airman Medical Records/Information

• Freedom of Information Act, Privacy Act and Subpoenas
• Disclosure of Medical Records/Information
  – Define the Purpose of Examination
• Doctor May Be Liable for Disclosure of Confidential Doctor/Patient Communications
Doctor/Patient Confidentiality v. Public Safety

• Generally No Duty to Disclose
• Tarasoff and Subsequent Developments
• Assuming No Duty to Disclose, Can AME Elect to Disclose?
  – Liability for Breach of doctor/patient confidentiality
  – Public Interest Defense
  – Ohio & Virginia Laws
Doctor/Patient Confidentiality v. Public Safety

• If Doctor Elects Not to Disclose:
  – Doctor Should Advise Patient of Lack of Medical Qualification
  – Document that Doctor Advised Patient
FAA Hotline

http://www.faa.gov/about/office_org/headquarters_offices/aae/programs_services/faq_hotlines/

https://www.faa.gov/contact/safety_hotline
FAA Hotlines

- We also ask that you provide your contact information in the event that the FAA needs additional information. Please note that anonymous reports are accepted.

  • Hotline web form

  • Email: FAAHotline@faa.gov

  • Fax: 202-267-9555
Report Aviation Safety Issues

tell FAA

* indicates a required field.
* I am a(n): Select one

How may we help you?
- I have a concern involving an FAA employee, FAA office or FAA policy.
- I have an aviation safety concern.

Your Concern, Inquiry, or Comment

Please provide details about your concern. Include the person, company or organization allegedly engaged in misconduct; a description of the alleged misconduct; the facility and program affected by the alleged misconduct; how you became aware of the alleged misconduct and names of potential witnesses.

Describe your Concern, Inquiry, or Comment.

Characters remaining: 7500

Incident Date (if applicable): [mm/dd/yyyy] [Launch Date Picker]

Contact Information

* First Name
* Last Name
Street Address
City
State: Select a state
Zip Code
Contact Phone
* Email Address
International Phone

☐ I wish to remain anonymous.
Conclusion

Comments/Questions?