

Aviation Medical Examiner Program

Legal Aspects of Medical Certification

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Federal Aviation
Administration



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



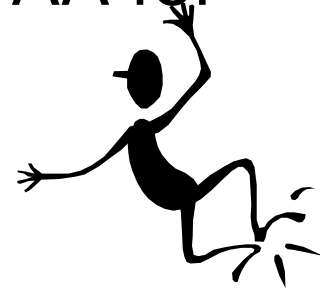
Options Once Examination is Complete

- 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



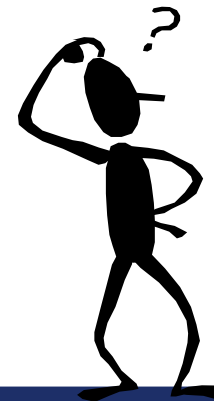
Issue the Medical Certificate

- 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



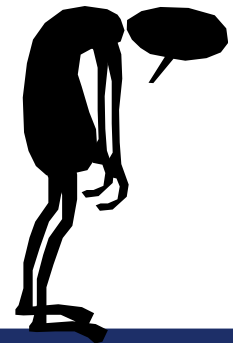
Defer the Application

- 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
- 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

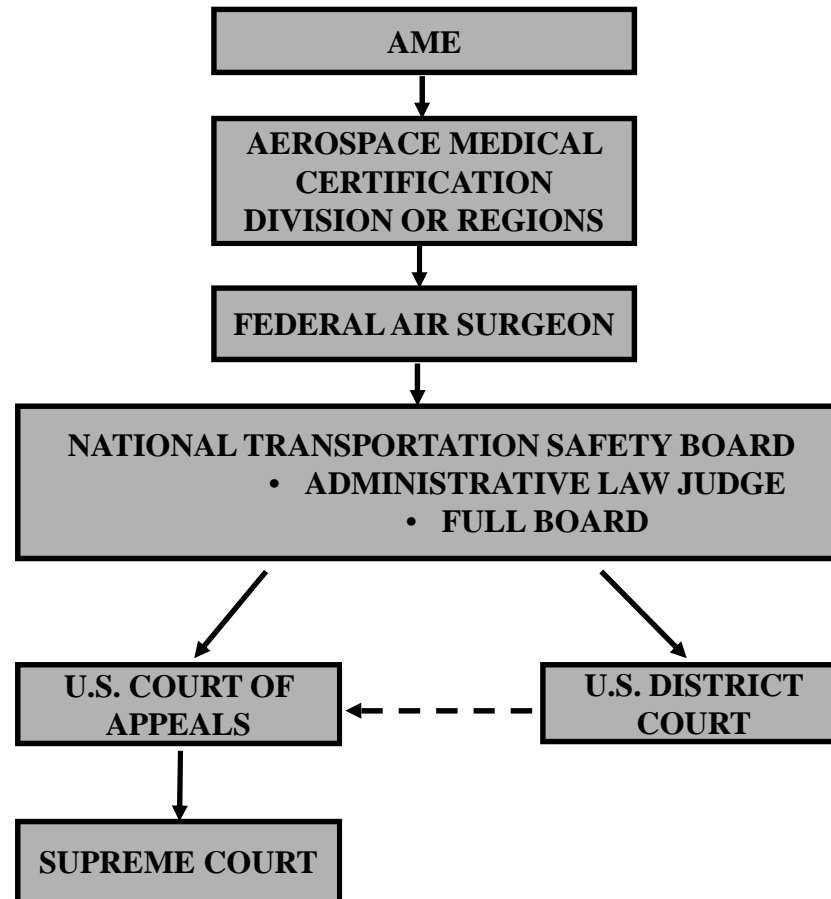


Appeal from Full NTSB Decision

- 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

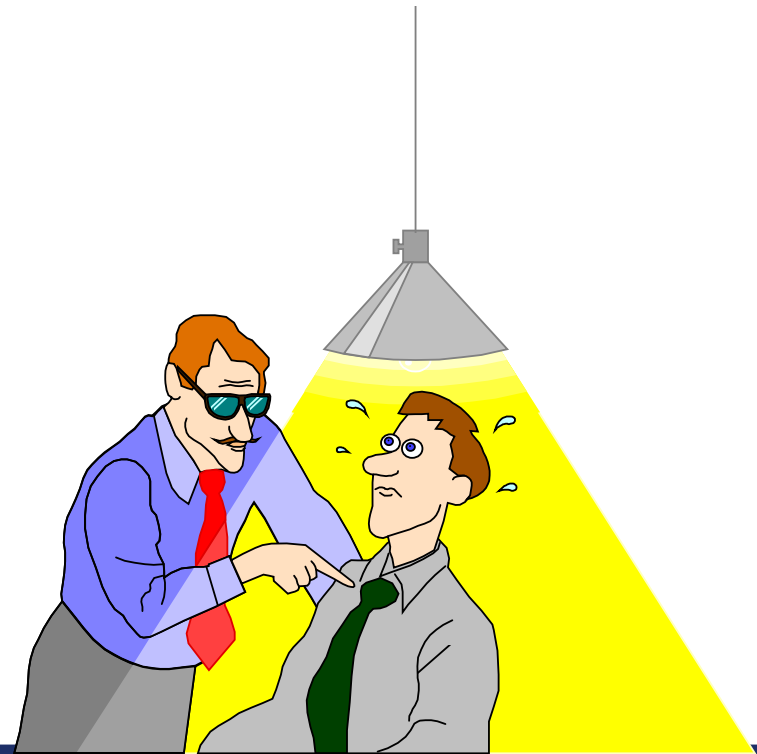


Airman Medical Certification Review and Appeals Process



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
 - Report on Application for Medical Certificate Does Not Satisfy Section 61.15 Reporting Requirement and vice-versa.



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/faa_hotlines/

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



FAA Hotlines

i Please note that our Hotline **does not** accept certain types of reports. If we receive these types of reports, you may not receive a response from our office. See recommended contacts for additional information.

The FAA Hotline accepts reports related to the safety of the National Airspace System, violation of a Federal Aviation Regulation (Title 14 CFR), aviation safety issues, and reports related to FAA employees or FAA facilities. The FAA Hotline provides a single venue for FAA employees, the aviation community and the public to file their reports.

In order to appropriately address your safety report, please provide as much detailed information as possible about your allegations to include:

- what is the allegation or regulatory violation
- who is the responsible party
- when and where did it occur
- possible witnesses, if any

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

Mail: Federal Aviation Administration
Office of Audit and Evaluation
800 Independence Avenue, S.W.
Washington, D.C. 20591
Attn: AAE-300, Room 911

•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



* indicates a required field.

* I am a(n):

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 concise 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):

[Date Picker keyboard shortcuts](#)

I wish to remain anonymous.

Contact Information

* First Name

* Last Name

Street Address

City

State

Zip Code

Contact Phone

* Email Address

International Phone

I wish to remain anonymous.



Conclusion

Comments/Questions?

