

Aviation Medical Examiner Program

Legal Aspects of Medical Certification

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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**



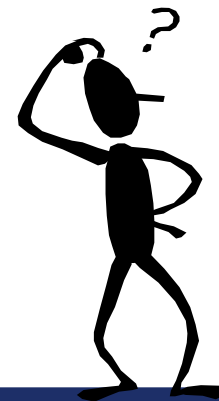
Issue the Medical Certificate

- **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**



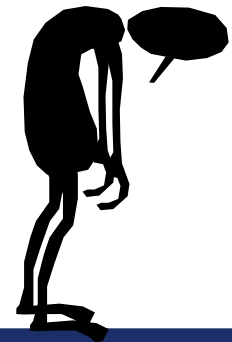
Defer the Application

- **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



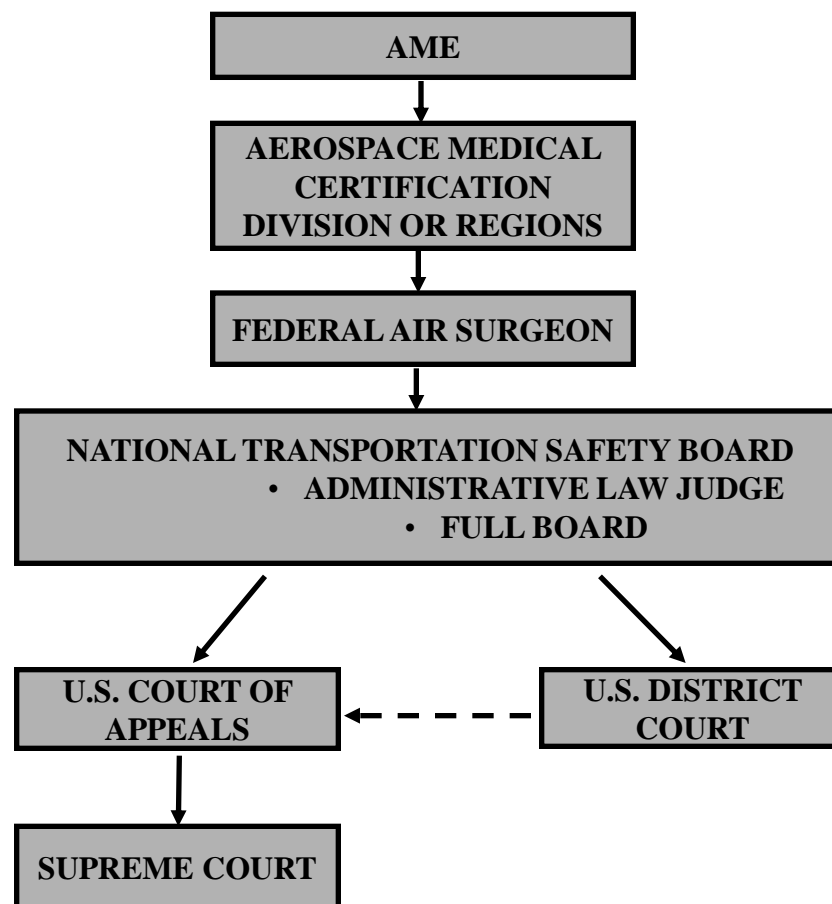
Petition the NTSB to Review the Final Denial

- **Role of the NTSB**
- **Process Before the NTSB**
 - Hearing before Administrative Law Judge
 - Appeal to Full NTSB

Appeal from Full NTSB Decision

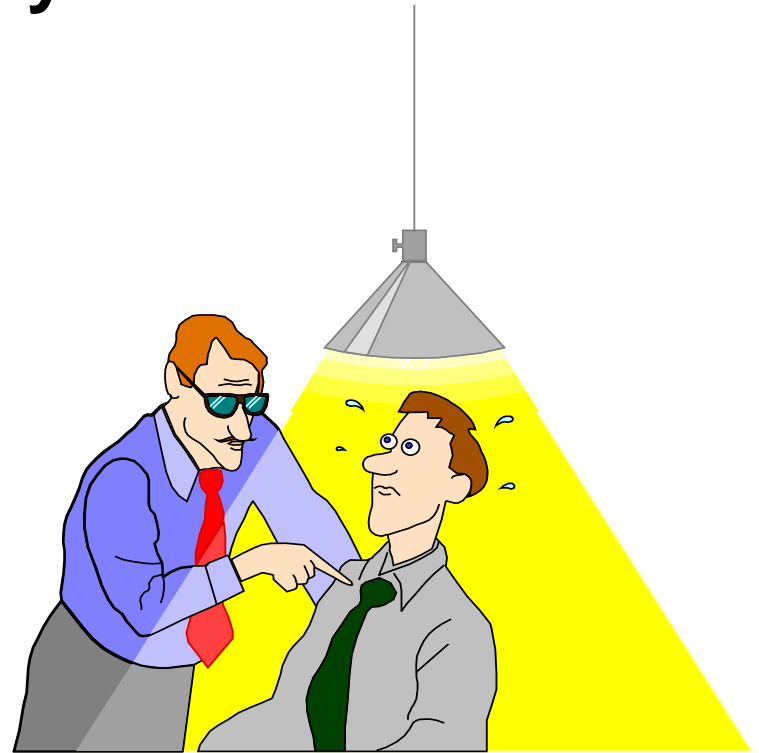
- **Petitioner May:**
 - Appeal Full NTSB Decision Directly to a United States Court of Appeals; or
 - Appeal Full NTSB Decision to a United States District Court and, if the Denial is Upheld by the District Court, Appeal to a United States Court of Appeals
- **Administrator May:**
 - Appeal Full NTSB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

▶ Report Issues Related to Aviation Safety or FAA Personnel and Facilities

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.



The FAA Hotline **does not** accept certain types of reports. If we receive these types of reports, you may not receive a response from our office, or these matters may be redirected to the appropriate FAA office. [See recommended contacts](#) for additional information.

How to Submit Your Report

Your report may be submitted via:

- [FAA Hotline Web Form](#)

Conclusion

- **Comments/Questions?**

