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PLEASE REPLY TO DC OFFICE

October 15, 2008

Frederick E. Tilton, MD, MPH  
Federal Air Surgeon  
FAA National Headquarters  
Orville Wright Bldg, Room 800W  
800 Independence Ave., SW  
Washington, DC 20591

Dear Dr. Tilton:

As the legal counsel for the Aircraft Owners and Pilots Association (AOPA), I am writing to express concern regarding a change to the FAA's Form 8500-8, Application for Airman Medical Certificate or Airman Medical and Student Pilot Certificate. As you know, AOPA is a not-for-profit individual membership organization of more than 415,000 pilots. AOPA's mission is to effectively serve the interests and needs of its members as aircraft owners and pilots and establish, maintain, and articulate positions of leadership to promote the economy, safety, utility, and popularity of flight in general aviation aircraft. Representing two thirds of all pilots in the United States, AOPA is the largest civil aviation organization in the world. Recently, concern has arisen over one of the changes made by the FAA on the application for an airman medical certificate. In particular, Item 18v on the form will now require applicants to disclose any history of "arrests" in addition to convictions and administrative actions. We fear that this new disclosure requirement presents overreaching implications.

It is easy to appreciate the importance of disclosing potential alcohol abuse and reckless behavior as they may relate to FAA airman medical certification. The FAA has used this information, as shown by a record of convictions or administrative actions, as a factor in determining an applicant's medical certificate eligibility. Such disclosures have been relevant in an analysis of whether an applicant is qualified to receive an FAA-issued airman medical certificate, and we support the FAA's efforts to ensure safety and responsibility in general aviation.

That said, however, there are critical differences between an arrest and a conviction, most notably that an arrested individual has not been afforded due process of law. Black's Law Dictionary defines "conviction" as "the result of a criminal trial which ends in a judgment or sentence that the accused is guilty as charged." Inquiring into whether an individual actually committed a relevant offense is both logical and permissible. An arrest, however, affords no such certainty. It is defined as "taking, under real or assumed authority, custody of another for the purpose of holding or detaining him to answer a criminal charge or civil demand." An arrest is not indicia of guilt. An individual who has been arrested but not convicted has not been afforded due process of law. The Supreme Court in Coffin v. the United States established the important principal that an accused is entitled to a presumption of innocence, more popularly coined as "innocent until proven guilty." 156 U.S. 432, 457-461 (1895). Requiring an individual to disclose an arrest for an offense of which he has not been found guilty seems to go against this basic principle. There is concern that such disclosure in the circumstances of a medical fitness evaluation may infringe without cause upon this basic right of an individual to be afforded a presumption of innocence.

Under the circumstances then, it seems appropriate to request that the FAA explain how it intends to use the newly required information on "arrests". If an individual is considered innocent, what is the purpose of disclosing an arrest? Will an arrest hold the same weight against an applicant as a conviction or administrative hearing? The wording of the question, "arrests, and/or convictions," implies that the two situations are treated as one and the same for purposes of the FAA's consideration of an applicant's medical history. There is concern that this information will be used improperly against individuals who have not yet had an opportunity to defend the charges or who have been found innocent. Such charges, therefore, could not be relevant to any FAA medical determination. Under the proposed change, it appears that the FAA will not distinguish between an arrest and a conviction, thereby considering an arrest as conclusive of guilt when the applicant should be afforded the presumption of innocence under the law.

This concern is heightened by your brief treatment of the change in the article "GG is coming" in the Federal Air Surgeon's Medical Bulletin, Vol. 46, No. 2 2008-2. In that article, you describe the changes to Form 8500-8. The new Item 18y is set forth and the reasons for the addition explained. You also clarify why the language in Item 57 was changed from "urinalysis" to "urine test." With Item 18v, however, you simply state that it will be changed "to add the words *arrest* and *arrested* in a couple of places. This is a substantive word addition that goes far beyond clarifying what is already requested; it expands the scope of what must be disclosed. It is imperative that records of arrest not be lumped in with convictions and given the same consideration.

A history of substance abuse and reckless behavior may be relevant to the determination of an applicant's medical fitness. However, arrests for which an individual has been found guilty of an alcohol or drug related offense, or which affected an


applicant's driving privileges, are already disclosed as derivative of a conviction or administrative action. Because of the additional requirement to disclose "arrests," the potential exists that some applicants will be denied a medical certificate due to irrelevant incidents that do not speak to the matter of medical fitness. For example, states such as New Jersey will arrest and suspend an individual's driver's license for failure to pay child support. Likewise, arrest and license suspension can result from unpaid parking tickets. As you likely agree, these situations are probably not relevant to an applicant's medical history. The FAA has introduced the possibility that a plethora of parking tickets could result in a pilot being denied a medical certificate.

These concerns are compounded by the FAA's decision to add "arrests" to Item 18v, while leaving Item 18w, also inquiring into convictions, unchanged. Item 18w asks whether an applicant has a "history of nontraffic conviction(s) (misdemeanors or felonies)." The same concerns expressed above, namely that an individual is innocent until proven guilty, hold true here. However, one could more logically assert the relevance of arrests in this situation. Traffic offenses are typically resolved in a relatively timely manner. Criminal trials, on the other hand, can last years. Thus, an applicant who has psychopathic tendencies evidenced by his dual homicide would be able to confidently check "no" on his medical history portion of the application for years, under Item 18w. An applicant who was once arrested and lost his license for failure to pay parking tickets, however, will have this offense considered against his physical fitness to fly. Such a distinction seems illogical.

It appears that the FAA has not given due consideration to the significance of the change presented by the addition of "arrests" to the required disclosures for an applicant's medical history. The question as currently worded, requiring disclosure of convictions and administrative actions, captures the information that is timely and relevant to a determination of medical fitness. The addition of "arrests" will place an undue burden on pilots to disclose irrelevant information that will potentially be used against them in an unfair manner and without cause.

The FAA should reconsider adding "arrests" to Item 18v of the application for an airman medical certificate. At the very least, the FAA should publish guidance, available to all medical applicants and aviation medical examiners, as to how the disclosures of arrests will reflect upon the determination of medical fitness of applicants.

Sincerely,



Kathleen A. Yodice  
Counsel to AOPA

Bcc: Leisha Bell  
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