

4910-13

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Compliance and Enforcement Bulletin No. 2010-1

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of enforcement policy.

SUMMARY: This notice announces a limited program to forgo enforcement action for persons who disclose before September 30, 2010, previous falsification on applications for airman medical certification regarding the use of antidepressant medication, the underlying condition for which the antidepressant was prescribed, and visits to health professionals in connection with the antidepressant use or underlying condition.

EFFECTIVE DATES: Effective date April 5, 2010. This Notice is issued simultaneously with “Special Issuance Medical Certificates to Applicants Being Treated with Certain Types of Antidepressants,” [Docket No. FAA-2009-0773].

FOR FURTHER INFORMATION CONTACT: Susan S. Caron, Enforcement Division, FAA Office of the Chief Counsel, 800 Independence Avenue, SW, Washington, DC 20591; 202-267-7721; email address; susan.caron@faa.gov.

SUPPLEMENTARY INFORMATION:

Background

Compliance and Enforcement Bulletin 2010-1, which amends FAA Order 2150.3B, Compliance and Enforcement Programs, is being issued in connection with FAA policy statement, “Special Issuance Medical Certificates to Applicants Being Treated with

Certain Types of Antidepressants,” [Docket No. FAA-2009-0773]. The Bulletin is intended to encourage airmen to make a complete disclosure regarding a history of or current use of antidepressant medications, the underlying condition for which the antidepressant medication was prescribed, and associated visits to health professionals so that they can be considered for special issuance medical certification under the new policy on the use of certain antidepressants. Under the terms of Bulletin 2010-1, the FAA will not initiate legal enforcement action against applicants for violations of 14 C.F.R. § 67.403 regarding past medical applications if the applicant discloses a history of antidepressant use, the underlying condition for which the medication was prescribed, and visits to health professionals in connection with the antidepressant use or underlying condition on an application for medical certification made between April 5, 2010 and September 30, 2010.

The Notice

COMPLIANCE AND ENFORCEMENT BULLETIN NO. 2010-1

SUBJECT: Forgoing enforcement action for persons who disclose previous falsification on applications for airman medical certification regarding the use of antidepressant medication, the underlying condition for which the antidepressant was prescribed, and visits to health professionals in connection with the antidepressant use or underlying condition.

DISCUSSION: This Bulletin is issued in connection with FAA policy statement, “Special Issuance Medical Certificates to Applicants Being Treated with Certain Types of Antidepressants,” [Docket No. FAA-2009-0773], published in the Federal Register on

April 5, 2010. In that policy statement, the Federal Air Surgeon reiterates his conclusion that the use of antidepressant medication is disqualifying for airman medical certification under the standards in subparts B, C, or D of 14 C.F.R. part 67 and, therefore, a basis for denial of medical certification for airmen using such medication. Until now, the Federal Air Surgeon generally also has been unwilling to grant the special issuance of airman medical certificates under 14 C.F.R. § 67.401 to airmen who take antidepressant medications. In his policy statement, however, the Federal Air Surgeon has announced that he is now prepared to consider, on a case-by-case basis, applicants who take certain antidepressant medications identified in the policy for the special issuance of all classes of medical certification. This change in policy is explained in the Federal Air Surgeon's policy statement.

The Federal Air Surgeon is aware that some airmen who take antidepressant medications may have knowingly concealed their use of the medications on past applications for airman medical certification in order to obtain a medical certificate. Under FAA's sanction guidance, the ordinary sanction for intentional falsification of an application for airman medical certification, an act prohibited by 14 C.F.R. § 67.403, is revocation of the airman's medical certificate and all other airman or ground instructor certificates held by the airman.

The FAA wants to encourage airmen to make a complete disclosure regarding a history of or current use of antidepressant medications, the underlying condition for which the antidepressant medication was prescribed, and associated visits to health professionals so that they can be considered for special issuance medical certification. Therefore, the FAA will not initiate legal enforcement action against applicants for

violations of 14 C.F.R. § 67.403 regarding past medical applications if the applicant discloses a history of antidepressant use, the underlying condition for which the medication was prescribed, and visits to health professionals in connection with the antidepressant use or underlying condition on an application for medical certification made between April 5, 2010 and September 30, 2010. The FAA believes that safety requires that any airman taking antidepressant medication must be properly evaluated, and if appropriate, followed, which can be accomplished through the special issuance certification process. The FAA believes that in the limited circumstances described in this Bulletin, the benefit of facilitating the disclosure of antidepressant use will outweigh any harm to the public interest caused by forgoing FAA enforcement action for falsification.

The FAA does not have the authority to offer immunity from criminal prosecution under 18 U.S.C. § 1001 for making any materially false, fictitious, or fraudulent statement or entry on the medical application (FAA Form 8500-8) because immunity can only be offered by the Department of Justice (DOJ). However, the FAA and the Department of Transportation's Office of Inspector General (DOT OIG), the office through which the FAA makes referrals for possible criminal prosecution, have agreed that the FAA will not refer cases of apparent intentional falsification covered by this Bulletin to the DOT OIG for criminal investigation or prosecution.

The policy set forth in this Bulletin is limited to disclosure of past and present antidepressant use, the underlying condition for which the antidepressant medication was prescribed, and visits to health professionals in connection with the antidepressant use and underlying condition. It in no way is intended to undermine the FAA's lack of

tolerance for airmen who intentionally falsify applications for airman medical certification. This Bulletin does not provide any protection from enforcement action to individuals who may have falsified other information on FAA Form 8500-8 than that described in this Bulletin.

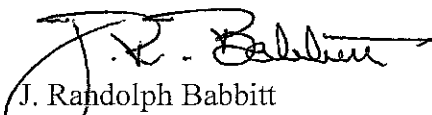
To benefit from the protection offered under this Compliance and Enforcement Bulletin, an airman must surrender for cancellation to the Federal Air Surgeon any current medical certificates. The airman must apply for a medical certificate between April 5, 2010 and midnight on September 30, 2010. On the application, the applicant must disclose his or her complete history of antidepressant use, the underlying condition for which the medication was prescribed, and visits to health professionals in connection with antidepressant use or the underlying condition. If an applicant falsifies any of this information on an application made on or after April 5, 2010, the FAA may take enforcement action based on that application and the previously falsified applications.

The protection from FAA enforcement action for intentional falsification provided by this Compliance and Enforcement Bulletin applies to all airmen who meet the requirements of this Bulletin before midnight on September 30, 2010, regardless of whether the Federal Air Surgeon is able to find the applicant qualified for the special issuance of a medical certificate under 14 C.F.R. § 67.401. Applicants need to be aware that the special issuance of a medical certificate is a decision made at the discretion of the Federal Air Surgeon to individuals who do not meet the medical standards for an unrestricted certificate under 14 C.F.R. part 67, subparts B, C, and D only when the Federal Air Surgeon finds that the individual can perform the duties authorized by the class of medical certificate applied for without endangering public safety. It is not likely

that all applications will result in the issuance of a certificate under section 67.401. The Federal Air Surgeon will consider an airman's individual medical and psychiatric history and all supporting documentation submitted with the application on a case-by-case basis before determining whether to grant the special issuance of a certificate. If the Federal Air Surgeon finds after completing his assessment that he cannot safely issue an applicant who has complied with the terms of this Compliance and Enforcement Bulletin a special issuance medical certificate, the applicant will receive a final denial letter notifying the applicant that he or she is not qualified under the Part 67 medical standards and that a special issuance certificate has also been denied. An airman may petition the National Transportation Safety Board for review of the denial under the Part 67 medical standards. A denial of a special issuance certificate may be appealed to an appropriate United States court of appeals.

FOR FURTHER INFORMATION CONTACT: Susan S. Caron, Enforcement Division, AGC-300, 800 Independence Avenue, SW, Washington DC 20591; susan.caron@faa.gov.

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J. Randolph Babbitt
Administrator