

We'll Stop Saying It When People Stop Doing It: Don't Lie to the FAA

Amundsen Davis Aerospace Alert
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Most airmen are aware that a misrepresentation on a Medical Certification Application could cost them their pilot's license. What some may not realize, though, is that a misrepresentation could also lead to a criminal conviction, and even prison. The Court of Appeals for the 11th Circuit, in the unpublished decision ***U.S. v. Demaria***, has issued a stark reminder of the importance of being truthful in all dealings with the federal government.

According to the **Department of Transportation's Inspector General**, pilot Steven Michael Demaria failed a drug test in connection with a job application for an air-taxi operator in 2004, which caused the FAA to issue an emergency revocation. Between 2012 and 2014, he submitted three medical certification applications stating, in response to Question 18(n), that he had never failed a drug test. It's not clear why Demaria did not answer accurately, and one could guess any number of reasons.

Under federal law, anyone who "makes any materially false, fictitious, or fraudulent statement or representation" in any matter within the jurisdiction of the U.S. Government faces a fine and prison time of up to five years. 18 U.S.C. § 1001(a)(2). The U.S. Attorney brought criminal charges against Demaria, and won a conviction.

Demaria appealed his conviction. Demaria argued that there was no evidence that his false statements were "material" to the FAA. A statement is "material" if it tends to influence or is capable of influencing the decision maker. It does not matter whether the statement actually influences the decision maker, and can be deemed "material" "even if it is ignored and never read." According to the court, the government's evidence that the FAA's medical accreditation procedure intensifies if an applicant answers Question 18(n) in the affirmative sufficed to show that Demaria's misrepresentation was "material."

Demaria also argued that his answer did not matter because the FAA knew or should have known that he previously failed a drug test. The FAA had, after all, revoked his license in 2004 for failing a drug test. The court, though, noted that the Airman Medical Examiner is not an FAA employee and does not have access

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to a pilot's previous answers. Moreover, the AME immediately issues a medical certification, so even if the FAA eventually catches a false answer, the airman will have flown for some time based on a falsehood. Therefore, the 11th Circuit affirmed Demaria's conviction.

The message here is actually a bit more subtle than, "don't lie to the FAA." The FAA will almost always claim that the information it asks for – whether for a medical certificate or some other reason – is "material." Thus, to help avoid civil or possibly even criminal troubles, aviation industry members should strive for meticulous accuracy when communicating with the FAA.

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