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Pilots: Ever been *arrested* for a DUI/DWI?

Every pilot must complete a medical application form at one point or another in order to exercise the privileges of a hard-earned pilot certificate. The form, in appearance, has not changed much over the 60+ years that the FAA has been requiring pilots to complete it before being examined by an Aviation Medical Examiner. The form resembles medical questionnaire forms that we might fill out for other purposes. The form asks for your identifying information, then asks about your medical history, before you are then required to sign the form to attest to your knowledge that all of your answers on the form are true and accurate to the best of your knowledge. What is important about the FAA's medical application form is that it asks about whether you have "ever in your life been diagnosed with, had or do you presently have any" of the listed conditions, and the form asks questions that are not strictly considered medical in nature. I'm speaking right now about Questions 18v. and 18w., which ask about your driving history and your criminal history.

Question 18v. asks about any history of arrest and/or conviction for driving while intoxicated by, while impaired by, or while under the influence of an alcohol or a drug, i.e., DUI or DWI. The question also asks about the denial, suspension, cancellation or revocation of your driving privileges and attendance at an educational or rehabilitation program that may have been associated with an arrest and/or conviction. Question 18 w. asks about any history of non-traffic misdemeanors or felonies. But for this article, I am focused on the question's use of "arrest and/or conviction" of a DUI/DWI.

Specifically, many airmen ask us about how far back is this question meant to reach. FAA maintains that the question asks you to answer in the affirmative if you have "ever in your life" been arrested and/or convicted of a DUI/DWI, as if it's so obvious. We maintain that the question is not as clear as the FAA may argue that it is in the sense that the language of the form is speaking to a medical diagnosis or a medical condition. The part of the question that asks about driving and criminal history is separated out from the list of medical issues, though it still bears the letter designations as falling under the instructions of Question 18. Years ago, that part of question 18 was separated out in order to draw greater attention to the language of the question, since a litigation exposed the understandable confusion that a driving record or a criminal record were not normally considered "Medical History". But, the separation seemed to create a new confusion about the breadth of the time period being questioned. To avoid the debate, suffice it to say that the question asks about a history "ever in your life".

Many airmen also ask us about whether anything should be reported if the event was dismissed entirely, or resolved in a minor way. It was only about 10 years ago that the question was changed to include "arrests", when prior to this change, the question asked only about those matters that resulted in a conviction for DUI/DWI. Therefore, as the question is now posed, no matter how you may have answered the question before it changed, it asks about any arrest for a DUI/DWI whether or not it ever resulted in a conviction for DUI/DWI.

Additionally, many airmen ask us about records that have been expunged. In many states, there is a routine process of removing history from someone's record after a certain time has passed. Some states treat an expunged record as one that does not have to be disclosed. Which leads us to a recent FAA enforcement action to revoke a student pilot's pilot and medical certificates for intentional falsification on a medical application form.

In this particular case, the airman was arrested for operating a vehicle while intoxicated 13 years before first completing and submitting an FAA medical application form. The airman lived out of state from where he was arrested and hired a local attorney to help him handle the criminal case. When the case was finally resolved, the attorney told the airman that the record would be expunged of the incident after 3 years. A few years later, he checked with the on-line court system and with the court clerk's office and there was no record of the event. Therefore, the airman thought that his "no" answer to Question 18v. was correct because he did not have a history of an arrest or conviction because he understood the record was expunged.

When the FAA issued an Emergency Order of Revocation, the airman appealed to the NTSB. The judge credited the pilot with thinking he didn't have to disclose the event and then believing his "no" answer to be correct. But, on FAA's appeal from the judge's decision, the NTSB disagreed with the judge's conclusion, stating that "... despite respondent's explanation that he believed all records relating to the OWI and subsequent actions had been expunged, the scope of question 18v is broader than simply whether records of such events exist at the time of the application." The NTSB reasoned that Question 18v. asks whether an applicant *ever* in his or her life had such events, and whether or not expunged, the facts of those events remain a part of that airman's history and those facts are required to be disclosed as asked for in question 18v. on the airman medical application. The NTSB made it clear that the answer to Question 18v. is, and forever will be, "yes."

We often write and lecture in the industry about the importance of taking the time necessary to make sure that information we put on records required by the FAA is accurate and complete. The risk of not doing so is substantial. Whether it's an application for a pilot, mechanic, or medical certificate, or a pilot logbook or a maintenance record, or flight and duty and flight records, the information recorded must be current, correct, and complete. If there is uncertainty regarding how to and whether to disclose certain information, it is best to ask the questions and research the answers in advance of completing the record rather than having to try to justify the record afterwards.