



Aviation Mental Health, the Cockpit and Liability

2024 Aviation Symposium
February 6-8, 2024

Fox
Rothschild

Mental Health – Germanwings Incident

- On March 24, 2015, Germanwings Flight 9525 crashed in the Alps, killing all 150 people on board
- The crash was due to deliberate actions by the copilot. According to the final accident report, the copilot started to suffer from severe depression in 2008
- In July 2009, and each year thereafter, the aeromedical center continued to renew the copilot's medical certificate
- On March 10, 2015, a private physician recommended the copilot receive psychiatric hospital treatment due to a possible psychosis, but no aviation authority was informed

What are the Standards for Mental Health

- All pilots who exercise airline transport pilot (ATP) privileges must possess a Class 1 Medical Certificate
- The Class 1 medical certificate includes mental health evaluations
- To pass, the applicant must be free of any established medical history or clinical diagnosis of any of the following:
 1. A personality disorder that is severe enough to have repeatedly manifested itself by overt acts
 2. A psychosis. As used in this section, “psychosis” refers to a mental disorder in which:
 - i. The individual has manifested delusions, hallucinations, grossly bizarre or disorganized behavior, or other commonly accepted symptoms of this condition, or
 - ii. The individual may reasonably be expected to manifest delusions, hallucinations, grossly bizarre or disorganized behavior, or other commonly accepted symptoms of this condition
 3. Bipolar disorder

What are the Standards for Mental Health – Substance Abuse

- The applicant must be free from Substance Dependence or Abuse:
- “Substance” includes:
 - Alcohol; other sedatives and hypnotics; anxiolytics; opioids; central nervous system stimulants such as cocaine, amphetamines, and similarly acting sympathomimetics; hallucinogens; phencyclidine or similarly acting arylcyclohexylamines; cannabis; inhalants; and other psychoactive drugs and chemicals
- “Substance Dependence” means a condition in which a person is dependent on a substance, other than tobacco or ordinary xanthine-containing (e.g., caffeine) beverages, as evidenced by—
 - A. Increased tolerance
 - B. Manifestation of withdrawal symptoms
 - C. Impaired control of use, or
 - D. Continued use despite damage to physical health or impairment of social, personal, or occupational functioning

What are the Standards for Mental Health – Substance Abuse

- “Substance Abuse” within the last 2 years is defined as:
 1. Use of a substance in a situation in which that use was physically hazardous, if there has been at any other time an instance of the use of a substance also in a situation in which that use was physically hazardous
 2. A verified positive drug test result, an alcohol test result of 0.04 or greater alcohol concentration, or a refusal to submit to a drug or alcohol test required by the U.S. Department of Transportation or an agency of the U.S. Department of Transportation; or
 3. Misuse of a substance that the Federal Air Surgeon, based on case history and appropriate, qualified medical judgment relating to the substance involved, finds—
 - i. Makes the person unable to safely perform the duties or exercise the privileges of the airman certificate applied for or held; or
 - ii. May reasonably be expected, for the maximum duration of the airman medical certificate applied for or held, to make the person unable to perform those duties or exercise those privileges

What are the Standards for Mental Health – Personality Disorders

- The person must also be free from certain personality disorders
- These include personality disorder, neurosis, or other mental conditions that the Federal Air Surgeon, based on the case history and appropriate, qualified medical judgment relating to the condition involved, finds—
 1. Makes the person unable to safely perform the duties or exercise the privileges of the airman certificate applied for or held; or
 2. May reasonably be expected, for the maximum duration of the airman medical certificate applied for or held, to make the person unable to perform those duties or exercise those privileges

What are the Standards for Mental Health – Second and Third Class Certificates

- A Second Class medical certificate is required for pilots who fly commercially—in operations such as crop dusting, delivering canceled checks, or carrying passengers or cargo for hire
 - Valid for commercial privileges for 12 months
- The mental condition standards for Second Class certificates is the same as First Class
- A Third Class medical certificate is necessary for student and private pilots and private pilots who do not fly for hire
- The mental condition standards for Third Class certificates is the same as First Class
- Third Class medical certificates do not require drug testing

What if Mental Health issues are disclosed?

- Applicants who are not issued a medical certificate by an AME may still be eligible for special issuance of a medical certificate
- To receive a special issuance, applicants must prove to FAA that they can perform the duties associated with the medical certificate without endangering public safety
- FAA requires strict monitoring and evaluation protocols for pilots to maintain eligibility for a special issuance
- For example, pilots with a history of alcoholism and drug dependence— who fly for airlines, commuter airlines, corporations, and other aviation companies—may qualify for a special issuance under the Human Intervention Motivation Study (HIMS) monitoring program
- HIMS is a four-phase, multi-year occupational substance abuse treatment program dedicated to helping pilots who achieve adequate recovery to safely return to flying aircraft

How is the FAA doing on Mental Health Issues?

- In July 2023, the Department of Transportation Office of Inspector General conducted a study of pilot mental health issues
- The DOT's conclusion was that the evaluation system is comprehensive, but that "opportunities exist to further mitigate safety risks"
- The report found that the FAA's ability to mitigate safety risks is limited by pilots' reluctance to disclose mental health conditions
- Pilot reluctance stems from "the stigma associated with mental health, potential impact on their careers, and fear of financial hardship"

How is the FAA doing on Mental Health Issues?

- As part of its study, the OIG audited 69 First and Second Class certificate approvals and found FAA conducted evaluations in accordance with Agency policies, guidelines, and Federal requirements
- The audit found that of the 69 applications, FAA denied medical certificates for various reasons, including an applicant's use of unapproved medications, disqualifying medical conditions, and failure to provide requested information
- For 29 applicants in our sample, Aviation Medical Examiners (AMEs) referred 29 of the applications to FAA for further review
- Of those 29, FAA denied 20 of the applicants' medical certificates
- However, the Agency later issued three certificates to applicants that took corrective actions (see table)

How is the FAA doing on Mental Health Issues?

- The Report also indicated that the FAA has no real data on how many pilots refuse to disclose medical issues
- The Report referenced a 2016 study of pilots which indicated that 12.6 percent of respondents were managing depression and 4.1 percent reported having suicidal thoughts without treatment because they feared negative impacts on their career
- The report made two recommendations to the FAA:
 1. Collaborate with airlines, airline pilot unions, and the aerospace medical community to conduct an assessment to identify ways to address barriers that discourage pilots from disclosing and seeking treatment for mental health conditions, based on the latest data and evidence
 2. Develop and implement policy and protocol revisions recommended in the assessment

Questions?

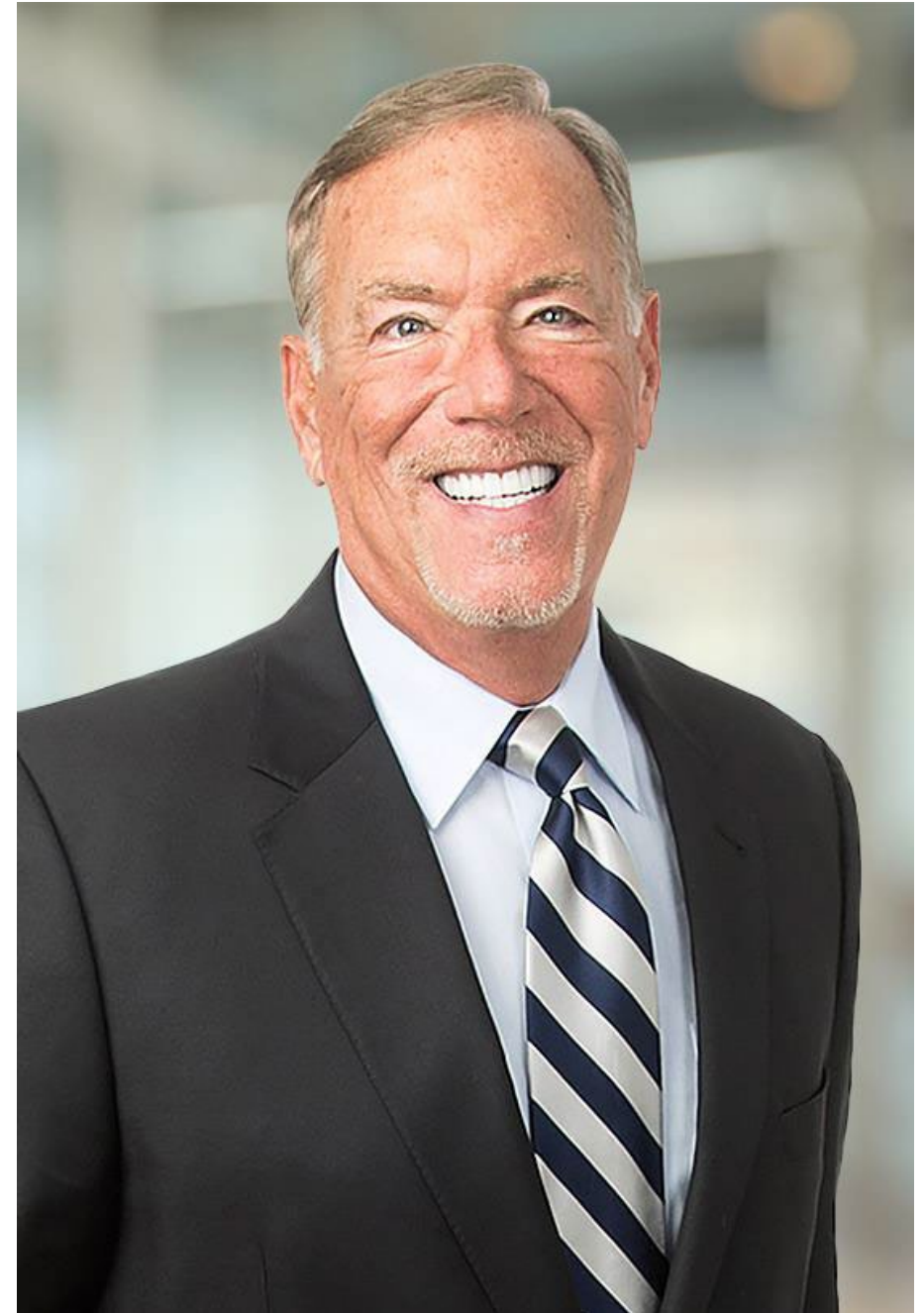
Mark Dombroff

Partner

Fox Rothschild LLP

202.696.1473

mdombroff@foxrothschild.com





Aviation Mental Health, the Cockpit and Liability

2024 Aviation Symposium
February 6-8, 2024

Fox
Rothschild