

FLIGHTWATCH

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WHY PILOTS SHOULD NOT DRINK AND DRIVE

I. OVERVIEW

Being apprehended by law enforcement personnel based upon a suspicion that an airman is driving while intoxicated can be a career-ending event. At a minimum, an adjudication of a legal proceeding arising out of the arrest of an airman on suspicion that the airman was driving while under the influence of alcohol or drugs can be a very complicating factor in the airman's efforts to continue exercising the privileges of his certificates. It can also be very expensive. In the paragraphs below, we will consider and evaluate a number of regulations which illustrate that the risks associated with driving while impaired are so significant that a reasoned and thinking airman should avoid this behavior at all cost.

II. THE PERSPECTIVE OF THE FAA ON "MOTOR VEHICLE ACTIONS"

Many airman believe the advice given to them by their criminal defense attorneys. They believe that if they are arrested by law enforcement officers for driving while under the influence and if they are not convicted of that particular charge, then there is nothing to report to the FAA. It is not uncommon for a driving while intoxicated charge to be resolved by way of a reckless driving charge or a plea of *nolo contendere*. While the criminal defense attorney may have told the pilot that a plea of *nolo contendere* is not a conviction, technically in many jurisdictions it is. The plea of *nolo contendere* (or "no contest") is a way for the court to dispose of the case without forcing the airman to admit guilt. However, despite what criminal defense attorneys tell pilots, the law in many jurisdictions views a *nolo contendere* as a species of a guilty plea. Pilots rely upon the advice given them by criminal defense attorneys that various plea bargain agreements and adjudications that do not bear the inscription of "driving while intoxicated" do not require disclosure to the FAA. Not surprisingly, the FAA takes a very different perspective on this issue.

As far as the FAA is concerned, if you are pulled over by a police officer and you are suspected of driving while impaired, if the police officer takes your driver's license from you and gives you a citation to substitute as your driver's license, the FAA is likely to argue that your driving privileges were suspended attendant to the roadside stop. In many jurisdictions,

some cancellation, suspension or loss of driving privileges will be imposed upon the pilot attendant to an arrest for driving while impaired or driving while intoxicated. Also, many jurisdictions will require that the pilot undergo counseling or an evaluation attendant to a driving while impaired arrest.

While, from a technical or mechanical standpoint, a pilot may not have been convicted of "driving while intoxicated" the fact is that the pilot needs to carefully read and consider the definition of a "motor vehicle action" appearing in FAR § 61.15(c). There are three subparagraphs to that regulation. In essence, if an airman suffers a conviction of driving while intoxicated or has his driving privileges canceled, suspended or revoked "for a cause related to the operation of a motor vehicle while intoxicated by alcohol or drugs, while impaired by alcohol or drug, or while under the influence of alcohol or drug" or if the airman has his driving privileges denied "for a cause related to the operation of a motor vehicle while intoxicated by alcohol or drug, while impaired by alcohol or drug," then any one or more of these elements satisfies the definition of a "motor vehicle action." Again, I would urge pilots to read these provisions of the regulation very carefully. The arrest only need be "related to the operation of a motor vehicle while intoxicated by alcohol or drug." There is no requirement in the regulation that the pilot be convicted of driving while intoxicated.

The net effect of this broad language defining a "motor vehicle action" is for the FAA to take the position that if an airman was arrested for driving while intoxicated but if the case is adjudicated by way of a reckless driving charge, as far as the FAA is concerned, the pilot has still suffered a motor vehicle action to the extent there ever was any cancellation, suspension, revocation or denial of driving privileges. Notwithstanding what criminal defense attorneys tell pilots, if the pilot gets arrested for driving while intoxicated and if the case is adjudicated based upon some lesser included defense, as far as the FAA is concerned, the pilot has suffered a "motor vehicle action."

III. THE OBLIGATIONS TO REPORT A "MOTOR VEHICLE ACTION" AND CONSEQUENCES FOR THE FAILURE TO DO SO

As discussed above, if the airman is arrested for driving while intoxicated and if the case is adjudicated based upon some lesser included defense, if the driving privileges of the pilot

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were canceled, suspended, revoked or denied, then the airman has sustained a motor vehicle action.” If the airman has sustained a motor vehicle action, then he must report this to the FAA Civil Aviation Security Division in Oklahoma City not later than 60 days after the motor vehicle action. The reporting requirements are set forth in FAR § 61.15(e). If the airman fails to report his motor vehicle action, then that is grounds for denying an application for any certificate and/or grounds for the suspension or revocation of any certificate or rating or authorization issued by the administrator. See FAR § 61.15(f)(1), (2).

IV. THE FOLLY OF REFUSING TO SUBMIT TO A BLOOD ALCOHOL TEST

Many airman believe they can avoid the pitfalls of a driving while intoxicated conviction by refusing to submit to a blood alcohol test. The problem with this approach is that the refusal is a basis for denying any application for any certificate up to one year after the date of refusal and is also grounds for the suspension or revocation of any certificate, rating or authorization issued by the administrator. See FAR § 61.16(a), (b).

While an extensive discussion of the medical implications of a driving while intoxicated conviction or motor vehicle action are beyond the scope of this article, the airman must ponder placing his medical certificate in issue in terms of a finding of “substance dependence” (FAR §§ 67.107(a)(4), 67.207(a)(4), 67.307(a)(4)) or “substance abuse” (FAR §§ 67.107(b), 67.207(b), 67.307(b)).

V. HOW YOUR AME EVALUATES A MOTOR VEHICLE ACTION

If the airman has a motor vehicle action, there are protocols and procedures to be followed by his aviation medical examiner (“AME”) in terms of whether the airman will be issued a medical certificate. The airman should determine in advance of any physical examination whether his AME is familiar with the protocols and procedures to be followed in this circumstance.

First, the airman must give an affirmative response to Question 18(v) on the Medical Application Form as well as a narrative relating to the date, court, findings and circumstances of the motor vehicle action. The airman should be candid in disclosing all the circumstances surrounding the arrest or conviction. In fact, a visit or consult with your AME before the evaluation will ensure you possess the necessary paperwork and material to complete the process.

If the airman’s blood alcohol content was .15% or less and this is the airman’s first offense, then the AME will be authorized to make a determination and issue a medical certificate (if appropriate) to the airman if the airman (1) has composed a narrative statement describing the events leading to the arrest and surrounding circumstances, (2) presents a department of motor vehicle record from his home state, (3) presents an investigative report prepared by law enforcement

attendant to the arrest of the airman, and (4) presents a substance abuse specialist report by an appropriately credentialed person who has evaluated the airman. If everything is in order, and if the AME is satisfied with the paperwork and materials, the AME may issue the airman a medical certificate despite the affirmative response to Question 18(v).

If the airman’s blood alcohol reading was greater than .15% but less than .20%, then the AME will have to defer the medical application and submit it to the FAA Civil Aeromedical Institute in Oklahoma City. An FAA physician will determine whether the airman meets the requirements of Part 67 of the Federal Aviation Regulations. If the airman’s blood alcohol content was .20% or more, the decision must be made by the Office of the Federal Air Surgeon in Washington, D.C.

VI. SUMMARY

If an airman is arrested on suspicion of driving while intoxicated or driving while impaired, he would be well advised to consult not only with a criminal defense attorney but also with an aviation lawyer. Too many pilots believe that all their troubles are over when and if the case has been resolved on a basis other than a conviction of “driving while intoxicated.” As noted above, the mere fact that the airman did not technically sustain a conviction for driving while intoxicated will not impress the FAA. If there was any suspension, revocation, denial of privileges or revocation of privileges arising out of or related to the operation of a motor vehicle while intoxicated or impaired, as far as the FAA is concerned, the airman has sustained a motor vehicle action, and this must be reported to the FAA Civil Aviation Security Division. A refusal by an airman to submit to a blood alcohol test can lead to serious consequences such as the suspension or revocation of any certificate, rating or authorization issued by the FAA.

The best advice counsel can give pilots about driving under the influence is not to do it. The legal consequences which flow from even the suggestion that the pilot drove a vehicle while intoxicated or impaired are so significant and adverse that no thinking pilot should drive while he is intoxicated or impaired.

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