

OWI/DUI Traps for Pilots

How to Create a Legal Disaster

By Donald C. Frank



I recently received yet another call from a pilot regarding a charge of operating a motor vehicle while intoxicated (OWI/ DUI) that had been mishandled into becoming a violation of Federal Aviation Administration (FAA) reporting requirements. Far too often, failure to comply with FAA rules while defending an OWI/DUI charge results in pilots facing otherwise avoidable pilot license suspensions, revocations, or even possible federal criminal charges. In many cases, these are particularly unfortunate because there would have been no violation of a Federal Aviation Regulation (FAR)¹ if FAA reporting requirements had been properly handled during the defense of the alcohol-related driving incident. As will be noted later, an OWI/DUI charge can also have implications for a pilot's medical requirements.

As may be expected, the FAA has stringent prohibitions on operating aircraft when it comes to alcohol. Even for noncommercial operations, pilots are prohibited from operating an aircraft within eight hours of consuming any alcoholic beverage, while under the influence of alcohol, or with a blood or breath alcohol concentration of 0.04 or greater,² and FAA sanction guidance calls for license revocation for any violation.³ Non-aviation practitioners need to know there are also FAA requirements involving alcohol and driving.

Since 1990, the FAA has required every person who holds an FAA pilot license to report each motor vehicle action (MVA) to the FAA even if it has nothing to do with piloting an aircraft. With the exception of student licenses, pilot licenses generally never expire,⁴ and the

reporting requirements apply even if the pilot is inactive and hasn't flown for many years. A report to the FAA may even be required despite driving charges being dropped or the pilot being acquitted, and once a motor vehicle action occurs, it must be reported within 60 days to the FAA's Civil Aviation Security Division or the pilot is in violation of the FARs even if he or she is ultimately acquitted of all charges.⁵

For reporting purposes, the FAA defines an MVA as:

- (1) A conviction after November 29, 1990, for the violation of any Federal or State statute relating to the operation of a motor vehicle while intoxicated by alcohol or a drug, while impaired by alcohol or a drug, or while under the influence of alcohol or a drug;
- (2) The cancellation, suspension, or revocation of a license to operate a motor vehicle after November 29, 1990, for a cause related to the operation of a motor vehicle while intoxicated by alcohol or a drug, while impaired by alcohol or a drug, or while under the influence of alcohol or a drug; or
- (3) The denial after November 29, 1990, of an application for a license to operate a motor vehicle for a cause related to the operation of a motor vehicle while intoxicated by alcohol or a drug, while impaired by alcohol or a drug, or while under the influence of alcohol or a drug.⁶

Practitioners can readily see from the definition that the first MVA arising out of allegedly driving under the influence of alcohol might have to be reported well before any conviction or acquittal, and that one alleged alcohol-related driving incident will typically result in multiple MVAs, each of which must be reported within 60 days. Once 60 days have elapsed after an MVA without a required report being made, the FAA reporting violation has occurred, regardless of any later outcome.

It is important to understand that in many or most cases, the MVA itself (even including a conviction) does not violate the FARs, but failing to report it does. An MVA reported in a timely manner only becomes grounds for suspending or revoking a pilot's license if two or more MVAs occur within three years of each other, excluding multiple actions arising from the same incident or factual circumstances.⁷ FAA sanction guidance provides for a 15- to 45-day suspension of all pilot certificates for failing to report an MVA within 60 days, a 90- to 120-day suspension for having two actions from separate incidents within three years if both were untimely reported, and revocation of all pilot certificates if there are three or more actions from separate incidents within three years.⁸ This means practitioners have the opportunity to create the worst of all possible outcomes—taking an event that is not a violation and turning it into one simply by failing to ensure it is timely and properly reported to the FAA.

Fast Facts

A pilot may be required to report an alcohol-related driving event to the FAA even if the driving charges are dropped or the pilot is acquitted.

A motor vehicle action arising out of driving under the influence of alcohol may have to be reported to the FAA well before any conviction or acquittal.

In most cases, an alcohol-related driving event does not violate any federal aviation regulation, but each failure to report the motor vehicle action arising out of that event to the FAA does.

Some may wonder how failure to report an MVA would be detected. Pilots are not out of the woods even if they meet all requirements to hold a pilot's license. Despite holding a perfectly valid FAA pilot license, in most cases a pilot cannot exercise the privileges of that license unless he or she also holds an FAA medical certificate. The duration of a medical certificate varies from six months to five years, depending on the type of pilot privileges and age of the pilot.⁹ The FAA considers alcohol and drug abuse or dependence to be a medical problem. Applications for FAA medical certificates must be made on FAA Form 8500-8, which has reporting requirements that overlap the MVA reporting requirements and includes the following complicated question:

18. Medical History—HAVE YOU EVER IN YOUR LIFE BEEN DIAGNOSED WITH, HAD, OR DO YOU PRESENTLY HAVE ANY OF THE FOLLOWING?

- v. History of (1) any arrest(s) and/or conviction(s) involving driving while intoxicated by, while impaired by, or while under the influence of alcohol or a drug; or (2) history of any arrest(s), and/or conviction(s), and/or administrative action(s) involving an offense(s) which resulted in the denial, suspension, cancellation, or revocation of driving privileges or which resulted in attendance at an educational or a rehabilitation program.¹⁰

Even if the FAA medical application is completed within 60 days of an MVA, it does not substitute for the report to the FAA's Civil Aviation Security Division. But failing to report alcohol-related events on the medical application worsens a pilot's situation by changing it from merely failing to make a report to arguably engaging in a willful falsification. Falsification is grounds for revoking all FAA certificates, and FAA policy is to revoke all



licenses and medical certificates if there has been a falsification.¹¹ Not only that, but as pilots are advised on the face of the FAA's medical application form, knowing and willful falsification is punishable by up to five years in prison and up to a \$250,000 fine pursuant to 18 USC 1001. Talk about needlessly creating a bad situation: a single underlying alcohol-related driving event does not violate a FAR, but each failure to report an MVA arising out of that event is a separate violation that might escalate into a falsification and a criminal act by failure to make required disclosures on the pilot's next FAA medical application.

Getting back to how any of this would be detected, immediately above the applicant's signature on the FAA medical application, the pilot is required to authorize the FAA to cross-check the pilot's information with the National Driver Register.¹² The FAA cross-checks the National Driver Register and thereby discovers when a pilot has failed to report an MVA. Once that is detected, enforcement action will follow.

Even with proper reporting, pilots are subjected to increased scrutiny on their FAA medical applications if alcohol-related incidents are reported. FAA medical regulations disqualify persons from holding an FAA medical certificate if they have a medical history or clinical diagnosis of substance dependence or have abused a substance within the preceding two years.¹³

The FAA's guidance to its designated aviation medical examiners now calls for applicants to provide the dates of all arrests and convictions involving driving while intoxicated, impaired, or under the influence of alcohol or drugs, or resulting in attendance at an educational or rehabilitation program. In addition, for first-time reports, a medical certificate applicant must provide copies of all court records and arrest reports related to events that occurred within five years before the medical examination.¹⁴

Those records will be scrutinized by the aviation medical examiner and the FAA to determine whether the applicant is medically disqualified because of substance abuse or dependence, even if the pilot has fully complied with all reporting requirements.

Whether a student pilot or a seasoned airline transport pilot, pilots have important FAA reporting requirements if they have an alcohol-related driving incident. Attorneys representing those individuals can save them from needless violations and enforcement actions by knowing and following the reporting requirements. ■



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ENDNOTES

1. The term "FAR" is commonly used by pilots, aircraft mechanics, and aviation legal practitioners to refer to any FAA regulation, all of which are codified in Title 14 of the Code of Federal Regulations.
2. 14 CFR 91.17 (2006).
3. U.S. Department of Transportation, FAA Order 2150.3B, Appendix B, Fig. B-3-1 <http://www.faa.gov/documentLibrary/media/Order/FAA_Order_2150_3B_W-Chg_9.pdf>. All websites cited in this article were accessed November 9, 2015.
4. 14 CFR 61.19(c) (2009).
5. 14 CFR 61.15(e) (2013).
6. 14 CFR 61.15(c) (2013).
7. 14 CFR 61.15(d) (2013).
8. U.S. Department of Transportation, FAA Order 2150.3B, Appendix B, Fig. B-4-a <http://www.faa.gov/documentLibrary/media/Order/FAA_Order_2150_3B_W-Chg_9.pdf>.
9. 14 CFR 61.23 (2013).
10. FAA Medical Application Form 8500-8, question 18v. The FAA limits access to current Form 8500-8 to medical applicants logged into the FAA's MedXPress electronic application system, but information on Form 8500-8, question 18v can be found in the FAA 2015 Guide for Aviation Medical Examiners, pp 37-39 <http://www.faa.gov/about/office_org/headquarters_offices/avs/offices/aam/ame/guide/media/guide.pdf>.
11. See 14 CFR 61.59 (2015); 14 CFR 67.403 (2015); FAA Order 2150.3B, Appendix B, Fig B-4-a.
12. See 14 CFR 67.7 (2015); FAA 2015 Guide for Aviation Medical Examiners, p 4.
13. See 14 CFR 67.107(a)(4)(2006); 14 CFR 67.107(b)(2006); 14 CFR 67.207(a)(4)(2006); 14 CFR 67.207(b)(2006); 14 CFR 67.307(a)(4)(2006); 14 CFR 67.307(b)(2006).
14. FAA 2015 Guide for Aviation Medical Examiners, p 38.