

# Torqued: Your Certificate May Be On the Line for What You Don't Record



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## **Torqued: Your Certificate May Be On the Line for What You Don't Record**

by John Goglia – July 3, 2018

Listen up, my fellow mechanics. How you record maintenance work just got a new focus, thanks to a recent NTSB decision that presents a potential new enforcement danger to your certificate.

A May 11, 2018 decision by the NTSB reinstating the FAA's emergency revocation of a Part 145 repair station puts a new emphasis on maintenance record entries; specifically, what maintenance personnel choose to leave out of their descriptions of work performed could land them in very hot water. This decision doesn't affect only repair stations or corporate maintenance providers. It's clearly applicable to

A&Ps, as well. The decision makes clear that intentional falsification can rest on information left out of the description of work performed, so-called shortcuts that many mechanics routinely take in recording maintenance. The case is so recent that it may yet be appealed to a federal court, so the final ruling could change. But in the meantime, the decision stands.

The AeroBearings case-officially, Daniel K. Elwell Acting Administrator, Federal Aviation Administration v. Kornitsky Group, LLC, d/b/a AeroBearings, LLC-involves the FAA's emergency revocation of the company's Part 145 repair station certificate for-among other things-falsification of records. I have a lot of issues with the case that was brought by the FAA and how it fits into the new "compliance philosophy." It seems that the company was authorized by one set of inspectors to do what it was doing for five years. A new inspector-after receiving two hotline complaints-reviewed the company's authorizations and determined the FAA had been mistaken in granted one of these authorizations.

The FAA reinspected the facility and, after 10 months, issued its report and handed the company an emergency revocation on the same day. Something seems unfair about all this and not consistent with the new compliance philosophy. Maybe more went on than is apparent from the initial and final decisions in the case. But it's always disconcerting when the FAA claims a company is unqualified to do work, but lets it operate for such a long time, and then apparently does nothing to correct the work that was performed for years.

OMITTED INFORMATION

According to the NTSB's decision related to the issue of falsification (there were other regulatory violations cited that were related to the company's authority to perform the work), the case turned on omissions made in FAAForm 8130-3s (Authorized Release Certificates). According to the FAA inspector who testified at the hearing, the "OEM manuals for the bearings in question did not authorize [AeroBearings] to disassemble bearings. He also testified that "[the company's] 8130-3 certifications were false in that they did not fully describe the work that had been performed." On cross-examination, the inspector admitted that the entries on the 8130-3 were not false, but that they were "incomplete in that they omitted some information."

The company's witness testified that the final inspection certification was accurate and that work performed before the inspection-though not recorded-was authorized. The administrative law judge determined that the FAA had not met its burden of proving intentional falsification and reversed the sanction of revocation. (The ALJ did, however, find other violations and ordered an indefinite suspension of AeroBearings certificate.) On appeal, the full Board reversed the law judge and reinstituted the emergency revocation.

On the issue of falsification, the NTSB first reviewed its long-standing standard for determining intentional falsification: "The [FAA] must prove the respondent (1) made a false representation, (2) in reference to a material fact, and (3) had knowledge of its falsity." The NTSB has previously determined that omissions can constitute the first prong of this test (false representation) and that certain omissions can be determined to be "material"; that is, if they could "affect decisions inspectors, mechanics, or operators make concerning work on the aircraft."

## INTENT TO FALSIFY

Previously, however, the Board has required the credibility of the maintenance personnel making the entry to be determined before concluding that the third prong of the test was met: that the person had knowledge of the falsity. This case makes new law in that regard. After dismissing the administrative law judge's credibility determinations, saying they were arbitrary and capricious (in all my years on the Board, I can't recall a case where a law judge's credibility determinations were found to be arbitrary and capricious), the decision states: "This case provides the Board with an opportunity to expressly expand the Board's 'willful disregard' standard...to mechanic intentional falsification cases." This means that a mechanic can be found to have intentionally falsified a maintenance logbook entry because of omissions he had intentionally made-even if there was no proven intent to falsify.

In that regard, the decision states: "When a repair shop does maintenance work...it must be scrupulously accurate in its records. This [repair station], by admittedly picking and choosing what to include in its records and leaving it up to the FAA and end user to guess as to whether the records contained the full and complete record of maintenance done on the aircraft, exhibited a willful disregard for the FARs, which were established to promote aviation safety."

What is most concerning is this statement from the decision: "No evidence suggests that the [repair station] was required to omit information. Whether the [repair station's] motivation was simply a desire to save time or part of a larger scheme to intentionally misinform is irrelevant. Knowledge, not

motivation, is the question before this Board."

I'll give you a moment to reread those last two paragraphs. Yes, the Board is saying that mechanics can lose their licenses if they fail to enter work they did, even if there was no intent to falsify. Say, for example, you're troubleshooting a flight control that is stiff or binding. You check the flight controls but can't feel anything so you start disconnecting them one at a time. On the left side, you disconnect them and put them back together, finding no problem. You turn to the right side and you find a bad bearing. In the signoff, you write that you replaced the bearing on the right control rod. You do not mention disassembling the left side in your troubleshooting. I don't know a mechanic who hasn't signed off a maintenance action like this. I know I have. I certainly had no intent to falsify by my omission.

And, yes, accurate maintenance records are critical. And the best policy would be to write up all the maintenance actions. But should this be grounds for a charge of falsification of records-a charge that would result in an emergency revocation-without giving you, the mechanic, a chance to prove that the omissions were not done with the intent to falsify?

This is a very disturbing decision and one that could have tremendous ramifications for mechanics and maintenance personnel throughout the industry, at repair stations, airlines, and any maintenance facility. I agree with the dissenting opinion of the NTSB chairman, Robert Sumwalt, who wrote: "The majority would apparently find that any failure to be 'scrupulously accurate' in a mechanic's logbook would foreclose the ability of a [mechanic] to subsequently argue

that he or she did not knowingly make a false entry.” He further wrote, “I do not share the majority’s enthusiasm for such expansion of this jurisprudence.”

Until this case is overturned, mechanics remain vulnerable to having their certificates yanked without a fair opportunity to defend themselves.

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