COMMENTS OF THE AMERICAN PILOTS’ ASSOCIATION ON MEDICAL WAIVERS FOR MERCHANT MARiner CREDENTiAL APPLICANTS WITH THE FOLLOWING CONDITIONS: CARDIOMYOPATHY, DIABETES MELLITUS, NARCOLEPSY, AND OBSTRUCTIONn SLEEP APNEA

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Introduction

The American Pilots’ Association (APA), on behalf of our nation-wide membership, submits the following comments in response to the Notice that appeared in the February 18, 2015 Federal Register, 80 Fed. Reg. 32, in which the Coast Guard requested public comments on policies for granting medical waivers to merchant mariner credential applicants with certain medical conditions.

The APA is the national association of the maritime piloting profession. Virtually all of the nearly 1,200 State-licensed pilots working in the 24 U.S. coastal States, as well as all of the U.S.-registered pilots operating in the Great Lakes system under authorization by the Coast Guard, belong to APA-member pilot groups. These pilots handle more than 90% of large ocean-going vessels moving in international trade in U.S. waterways. The role and official responsibility of these pilots is to protect the safety of navigation and the marine environment in the waters for which they are licensed. In this regard, the APA and the Coast Guard have the common objective of working to ensure public and maritime safety. With respect to the general subject of this particular public Notice, the APA supports any Coast Guard efforts to put in place fair and consistent procedures for confirming that mariners are appropriately fit for shipboard duties.

While APA’s membership is comprised predominantly of groups of State-licensed pilots, APA has a strong interest in federal regulations and policies that impact credentialed mariners, including the Coast Guard medical review policies. The reason for this interest rests in the fact that State-licensed pilots also hold officer endorsements as federal first class pilots. In the State pilotage system, training, certification, qualification, and recency standards are far more stringent than any federal requirements, but the federal pilot endorsement does provide some benefit in that it serves as a national minimum standard.
In the State pilotage system, obtaining a federal first class pilot endorsement can be either an entry level requirement for selection to a State pilot training or apprentice program or it could be one of the many steps in such a training program preparing an individual for an eventual State pilot license. In addition, State pilots must maintain a valid federal pilot endorsement in order to hold a State license or to work under that license. As a result, the professional career of each State-licensed pilot, and the welfare of the pilot and his or her family, depends upon how the Coast Guard administers its medical review program, including the issuance of medical waivers for certain common medical conditions.

With the above as context, the APA respectfully offers the following comments and recommendations.

Comments

The APA welcomes the Coast Guard’s recognition of the need to “publish guidance on the criteria that will be used in determining whether an applicant’s medical condition warrants a medical waiver.” Such guidance can aid the mariner’s examining physician, reduce delays, and lessen the burden on mariners caused by National Maritime Center (NMC) requests for additional information. With detailed guidance in hand, examining physicians could give the NMC a more complete and appropriately focused medical evaluation and associated supporting documents.

The APA would like to expand on the idea of the Coast Guard making public its criteria for considering medical waivers. The APA recommends that the Coast Guard publish the internal criteria, check-lists, or other “job aids” used by its medical evaluators to review and determine merchant mariner medical fitness generally. While publication of factors considered by the NMC in making medical waiver determinations will, as discussed above, be valuable to examining physicians and will facilitate a more effective and timely decision by the Coast Guard, public disclosure of the factors the Coast Guard uses in its broader mariner fitness determinations will provide even more benefit to the overall mariner medical review process.

While each of the medical conditions addressed in the February 18 Notice is important, our comments focus on Obstructive Sleep Apnea (OSA) and the associated proposed policy changes. We recognize that untreated OSA can result in mariner fatigue, and the APA has long supported reasonable and science-based efforts by oversight authorities – State and federal – to mitigate the potential effects of fatigue, including addressing OSA. We do, however, have concerns with the Coast Guard’s proposal for evaluating continuous positive airway pressure (CPAP) therapy as a treatment for OSA, as well as other general concerns with the OSA medical waiver policies.

A widely accepted criteria for determining “regular use” of a CPAP device is 4 hours of use during major sleep periods for 70% of the time (e.g., 4 hour/70% standard).\(^1\) This CPAP usage standard was recognized by a panel of experts convened by the Federal Motor Carrier Safety Administration in 2008 (this recognition was reaffirmed in 2011). This panel recommended minimum acceptable CPAP use as “at least 4 hours of use per

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night on at least 70% of nights,” adding, “some patients benefit from more limited use.”

The APA is aware that the Coast Guard has used this 4 hour/70% standard to assess CPAP usage.

In the February 2015 Notice, the Coast Guard, without explanation, justification, or discussion of a medical or safety rationale, proposed to arbitrarily change the CPAP usage standard for mariners “acting under the authority of the mariner credential” to 4 hours per night 100% of the time. In addition to not offering a justification or scientific basis for altering the widely accepted CPAP usage criteria, the Coast Guard also did not afford the Merchant Mariner Medical Advisory Committee (MEDMAC) an opportunity to weigh in on this important matter. This is significant since one of the primary purposes of this statutorily established advisory committee, per 46 U.S.C. § 7115, is to advise the Coast Guard on “medical standards and guidelines for the physical qualifications of operators of commercial vessels.” Before undertaking such a significant policy modification, APA recommends that the Coast Guard seek MEDMAC’s formal recommendations regarding CPAP usage criteria for mariners.

Even if the Coast Guard ultimately decides to alter its policy on CPAP usage, increasing the standard from 70% to 100% is unreasonable. No human compliance standard set at 100% will be met all the time. This is especially true for CPAP usage in the maritime sector, where sleep times/locations, watch rotations, and various operational matters can routinely impact CPAP utilization. Since noncompliance with medical waiver conditions may be grounds for administrative actions against a mariner’s credential, establishing what is essentially an unachievable CPAP usage standard seems unfair.

In addition to the issue of the Coast Guard not consulting with MEDMAC or articulating a scientifically-based need to alter the CPAP usage standard, APA has two other concerns with the proposed revision of the Coast Guard’s policy on waivers for OSA:

(1) While the Coast Guard’s proposed policy on OSA waivers appears to provide two different CPAP compliance standards (i.e., 4 hours/100% of the time when “acting under the authority of the mariner credential” and 4 hours/70% for all other times), this seems, in reality, to be a distinction without a difference. The regulatory definition of “acting under the authority of a Coast Guard credential” is so broad⁴ that many mariners will almost always be subject to the 4 hours/100% standard.

(2) Under the proposed (and existing) policy, the Coast Guard requires a medical waiver for all instances of diagnosed OSA, even for the mildest case. The Coast

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³ Watch rotations vary widely depending upon the particular segment of the maritime industry and/or the position in which the mariner is working (e.g., harbor tugs, river tugs, ferries, dredges, pilots, coastal waters, open ocean, etc.)

⁴ Under 46 C.F.R. § 5.57, a person employed in the service of a vessel is considered to be “acting under the authority” of the mariner credential if the credential is required by law/regulation or is required by the employer as a condition of employment. This mariner is also considered to be “acting under the authority” of the credential when engaged in routine administrative dealings with the Coast Guard (e.g., renewing/upgrading a credential, taking examinations, ordering duplicated documents, etc.) and even when on shore leave from the vessel.
Guard’s OSA policy also does not draw any distinctions regarding the extent and frequency of documentary submissions required for varying degrees of severity of OSA. In other words, the Coast Guard policy seems to treat mariners with an Apnea-Hypopnea Index (AHI) of 6 events per hour the same as a mariner with an AHI of > 30 events per hour.\textsuperscript{5} \textbf{The APA recommends that the Coast Guard modify its medical review policies on OSA} – including the necessity for a medical waiver, as well as the extensiveness and frequency of submission of various documents and medical evaluations – depending upon the diagnosed severity of the underlying OSA condition.

\textbf{Conclusion}

These proposed policy changes are important to the APA and its member pilot groups, and we appreciate the opportunity to offer constructive comments and suggestions.

\textsuperscript{5} The criteria for classifying OSA severity is as follows: None [0-5 AHI events/hour], Mild [5-15 AHI events/hour], Moderate [15-30 AHI events/hour] and Severe [$\geq$ 30 AHI events/hour].