



U.S. House of Representatives
Committee on Transportation and Infrastructure
Washington, DC 20515

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October 6, 2009

SUMMARY OF SUBJECT MATTER

TO: Members of the Subcommittee on Coast Guard and Maritime Transportation

FROM: Subcommittee on Coast Guard and Maritime Transportation Staff

SUBJECT: Hearing on the “Qualifications and Credentialing of Mariners: A Continuing Examination”

PURPOSE OF THE HEARING

The Subcommittee on Coast Guard and Maritime Transportation will meet on Wednesday, October 7, 2009, at 1:00 p.m., in room 2167 of the Rayburn House Office Building to receive testimony regarding the National Maritime Center (NMC) and merchant mariner credentials (MMC). This hearing is a follow-up to a hearing convened by the Subcommittee on the same topic on July 9, 2009.

BACKGROUND

Over the past two years, the Coast Guard has made significant changes in the processes it utilizes to issue professional credentials to U.S. merchant mariners.

During 2008, the Coast Guard centralized within the NMC all of the credential processing services that were previously provided at 17 Regional Exam Centers (REC). The NMC opened at its current location in Martinsburg, West Virginia on January 7, 2008.

On September 15, 2008, the Coast Guard issued new guidelines to govern the review of medical information provided by a mariner as part of his/her application for an initial credential, the renewal of a credential, or the upgrade of a professional qualification.

Finally, the Coast Guard has consolidated the variety of individual mariner licenses and endorsements that it previously issued into a new MMC, which resembles a passport; within that

booklet, all of the individual credentials a mariner has earned are recorded. The Coast Guard began issuing the MMC on April 15, 2009.

The Subcommittee's hearing on July 9, 2009 considered the impact of all of these changes on the issuance of professional mariner credentials. The hearing also examined the significant backlog in credential applications that had developed at the NMC.

I. NATIONAL MARITIME CENTER

Over the course of 2008, the merchant mariner credentialing services that were previously provided at 17 RECs located across the country were consolidated at the NMC. The RECs continue to operate – but they now serve only as “storefronts and advocates” for merchant mariners.¹ The decision to consolidate all mariner credentialing services at the NMC was made in an effort to resolve the criticisms leveled against the provision of credentialing services through the RECs. The Coast Guard has acknowledged that when credentialing services were handled by the RECs, these centers did not provide a standardized service; each REC interpreted the regulations governing credentialing (including those governing the assessment of a mariner's medical fitness for duty) differently. Additionally, the RECs were often so focused on completing their workloads (processing credential applications and producing credentials) that they provided only minimal customer services to mariners. One report indicates that because of the autonomy of individual RECs, “the practice of ‘venue’ shopping was rampant among mariners who, when turned down for one reason or another at one location, would travel to another REC to try again.”²

At the present time, it is not necessary for an individual seeking an MMC to personally visit an REC (unless the individual needs to complete an exam to demonstrate the professional knowledge required to receive a credential); instead, the individual needs only to mail to the REC the credential application (with all required accompanying paperwork) and proof that fees have been paid (typically, they are paid via the Internet).³ The REC assesses each application for completeness and, after obtaining all forms initially required to support an application, forwards those materials to the NMC for processing. Individuals wishing to apply for a mariner credential at an REC in person can make an appointment using an on-line link on the NMC's website. RECs do continue to administer tests to mariners once the NMC has approved the mariner to take an exam for a particular credential.

The NMC and the RECs employ about 350 individuals, including civilian government employees, contractors, and 18 military members. The NMC is directed by a Coast Guard Captain who also holds an MMC with endorsements. The Coast Guard indicates that there are 180 contractors assigned to the NMC and to several of the RECs at the present time and that contractor support for the mariner credentialing program and the NMC is costing more than \$14.4 million. A breakdown of these costs is provided below:

¹ Coast Guard, *Coast Guard Unveils National Maritime Center*, <https://www.piersystem.com/go/doc/786/213654/> (last visited on July 1, 2009).

² Joseph Keefe, *Earning Back the Trust: One Mariner at a Time*, *The Maritime Executive*, (December 2007) at 37.

³ Coast Guard, *Clarifications to Merchant Mariner Credential Processing*, http://uscg.mil/nmc/announcements/clarifications_to MMC Processing.pdf (last visited on July 1, 2009).

- Professional Qualifications of Mariner Applicants: \$5,124,110;
- Security Suitability Evaluations of Mariner Applicants: \$3,289,000;
- Medical Fitness for Duty of Mariner Applicants: \$1,789,435;
- Mariner Information Call Center: \$1,336,687;
- Records Management: \$2,381,135;
- REC Charleston Records Archive Project: \$55,715; and
- Quality Assurance: \$430,071.

The 60,000-square-foot NMC facility is a “green building,” having received the silver certification from the Leadership in Energy and Environmental Design (LEED). The building is owned by JDL Martinsburg LLC and is leased from that company by the Coast Guard; this lease is reported by the Coast Guard to have a total cost of \$30 million over the next 20 years.⁴

To ensure effective customer service, the NMC operates a Call Center that is open daily from 8:00 a.m. to 8:00 p.m. (thus accommodating mariners calling from the West Coast). The Center has a staff of 24 individuals who are able to give real-time updates to mariners on the status of their applications. The Coast Guard has also revised and updated its website to provide current information regarding the transition to the NMC as well as the introduction of the MMC.

The NMC also houses the Merchant Mariner Training Course Approval and Oversight Program (the Program), which is responsible for developing each of the exams that mariners take to prove competence for a specific credential. The Program also approves the curricula taught by the nation’s approximately 270 maritime training course providers and reviews the qualifications of course instructors. Staff members of this Program audit training course providers at least once every five years and conduct periodic spot checks to ensure compliance with training standards. In the past, the role of oversight of mariner instruction courses was decentralized among the RECs.

II. MERCHANT MARINER CREDENTIALS

The Coast Guard estimates that there are approximately 216,000 individuals who hold some type of professional merchant mariner credential. In the past, the Coast Guard could issue to a mariner any one of four different types of credentials, including:

- Merchant Mariner’s Document – issued to individuals who served as rated or non-rated personnel on vessels (e.g., Ordinary Seaman, Wiper, Able Seaman etc.);
- Merchant Mariner’s License – issued to deck and engineering offers (e.g., Captain, First Mate, Chief Engineer etc.),
- Certificate of Registry – issued to staff officers (e.g., Ship’s Doctor or Professional Nurse); and
- STCW Endorsement⁵ – issued to show compliance with a specific qualification under the Standards of Training, Certification and Watchkeeping for Seafarers Convention.

⁴ Coast Guard, *Coast Guard Unveils National Maritime Center*, <https://www.piersystem.com/go/doc/786/213654/> (last visited on July 6, 2009).

⁵ The Convention on the Standards of Training, Certification, and Watchkeeping (STCW) is an international convention established in 1978 (and entered into force in 1984) to create uniform training and certification standards for merchant mariners. The STCW was significantly reformed by amendments adopted in 1995 (which entered into force on February 1, 1997); all mariners were required to comply with the Amendments by February 1, 2003. U.S. mariners are

Previously, these various documents, licenses, and endorsements were single pieces of paper that typically resembled diplomas; an individual who held a variety of credentials would be required to carry each piece of paper at all times while he/she was working as a merchant mariner.

On March 16, 2009, the Coast Guard published a final rule that took effect on April 15, 2009, creating a single MMC. The MMC resembles a passport and consolidates all of the qualifications earned by a mariner into a single document; as new qualifications are earned, they are affixed to the MMC as individual endorsements. The Coast Guard will issue domestic endorsements (including 43 officer endorsements [per 46 C.F.R. § 10.109(a)] and 17 rating endorsements [per 46 C.F.R. § 10.109(d)]) and international/STCW endorsements (14 endorsements are provided under 46 C.F.R. § 10.109(d)).⁶

Previously, mariners applying for an MMC of any type had to visit an REC to provide their fingerprints and other personal data to the Coast Guard. Now the Transportation Security Administration (TSA) collects the information and provides it to the Coast Guard when the mariner applies for the Transportation Workers Identification Credential (TWIC). Under 46 U.S.C. § 70105, all individuals who hold a mariner credential must also hold a valid TWIC (regulations requiring mariners to comply with TWIC carriage requirements went into effect on April 15, 2009). The Coast Guard will not issue any credential to an individual who has not been approved to hold a TWIC; additionally, the Coast Guard will not accept a credential application from anyone who has not completed an application for a TWIC.⁷

When a person applies for a TWIC, the applicant has the opportunity to identify “mariner” as the applicant’s occupation. The TSA automatically transmits to the Coast Guard the data provided by applicants who self-identify as mariners. However, information on those individuals who did not self-identify as mariners at the time they applied for a TWIC was not automatically transmitted to the Coast Guard in the first few weeks after April 15, 2009 – slowing the processing of some new and renewal MMC applications. The Coast Guard indicates it has worked with TSA to resolve this issue, and ensure that mariners’ data is provided to the NMC.

The issuance fee for an MMC is \$45; additional fees are assessed for credential evaluations and examinations which vary depending on the type of credential sought. However, at the time the MMC is issued, a mariner applicant must pay only one issuance fee and the highest single evaluation fee for any endorsements for which the applicant applies, regardless of the total number of endorsements for which the mariner applies.⁸ Additional fees are assessed when subsequent endorsements are sought for an existing MMC. MMCs are valid for five years and the endorsements affixed to them remain valid so long as the MMC is valid.

subject to the 1995 Amendments if they sail beyond the U.S. boundary line (the boundary line separates the bays, harbors, and other inland waters from the ocean) on commercial vessels, even if the vessel is not on a voyage to a foreign country. Mariners are exempt from the requirements if they sail on vessels less than 200 gross tons on domestic voyages that begin and end in a U.S. port.

⁶ Coast Guard, *Merchant Mariner Credential Terminology*,

http://uscg.mil/nmc/announcements/MMC_Terminology_Information_Bulletin.pdf (last visited on July 1, 2009).

⁷ Coast Guard, *Relationship Between the MMC and TWIC*,

http://uscg.mil/nmc/announcements/Relationship_MMC_TWIC_17Mar.pdf (last visited on July 1, 2009).

⁸ Coast Guard, *New User Fees for Merchant Mariner Merchant Mariner Credentials*,

http://www.uscg.mil/nmc/announcements/Fees_Information_Bulletin_16Mar.pdf (last visited on July 6, 2009).

When a mariner submits an application for a credential and/or license, the REC conducts an initial evaluation of the application to assess completeness of the application. On a daily basis, the RECs package the applications and send them to the NMC via commercial shipping services. The NMC receives approximately 300 applications a day.

Once the NMC receives the applications, they are logged into the NMC tracking system and sent to undergo a security/safety screen (to assess whether the mariner might pose a safety risk based on prior convictions for such offenses as drunk driving or drug possession [*see* 46 C.F.R. §§ 10.211 and 10.213]). Once the application passes the safety/security screen, it is subjected to a medical screening. Applicants who have medical conditions are subjected to a more detailed medical screening; if necessary, clarifying information on a medical condition can be sought from a mariner and his/her physician.

An application is also screened to determine whether the mariner meets the professional qualification for the credential the applicant seeks; if necessary, the applicant is then approved to take an exam to demonstrate professional knowledge (such exams are administered at the RECs and mariners have up to one year to take an exam once they are approved to test for a credential). If no exam is required and all other conditions for a credential are met, the MMC is printed at the NMC and sent to the mariner in the mail (additional quality screenings may be conducted during the application review process).

III. MARINER MEDICAL STANDARDS

All who apply for a credential (whether a first-time application or a renewal application) as an officer, able seaman, member of a rating forming part of a navigation or engineering watch, or qualified member of the engine department must submit the results of a general medical examination at the time they apply for a new or renewal MMC application. The results of a new physical examination must also be submitted whenever a raise in grade of a credential (such as from Chief Mate to Captain) is sought. If no raise in grade is sought during the five year validity of a credential, an individual does not need to submit the results of a medical examination again until the next renewal of the MMC. Further, a credentialed mariner is not required by statute or regulation to notify the Coast Guard of a change in a medical condition (or the emergence of a new condition) between MMC renewal periods.

Per 46 U.S.C. § 7101(e), a person may be licensed as a pilot for a vessel of more than 1,600 gross tons only if the person is over 21 years of age, is “of sound health and has no physical limitations that would hinder or prevent the performance of a pilot’s duties,” and “has a thorough physical examination each year while holding the license” (unless the license is for vessels under 1,600 gross tons).

Under 46 C.F.R. § 10.709, the Coast Guard implemented the requirements of 46 U.S.C. § 7101(e) by requiring that “[e]very person holding a license or endorsement as a first class pilot shall have a thorough physical examination each year while holding the license or endorsement.” However, this rule as in effect prior to the Staten Island Ferry allision (see below) stated that the “the record of the examination need not be submitted to the Coast Guard” except “[u]pon request.”

In recent years, the Coast Guard has implemented several changes to the way it handles mariners' medical forms and how it assesses a mariner's medical fitness for duty.

Staten Island Ferry Allision

On October 15, 2003, the Staten Island Ferry *Andrew J. Barberi*, a large passenger vessel owned and operated by the New York City Department of Transportation (NYDOT) and carrying 1,500 passengers, crashed into a concrete pier near St. George, Staten Island, killing 11 passengers and injuring 70 others.⁹ The crash tore a 210-foot long gash into the main deck of the vessel on the ferry's starboard side, where passengers had already crowded in anticipation of disembarking once the vessel moored.

At the time of the accident, the assistant captain, Mr. Richard Smith, who was steering the vessel, was standing upright but was unresponsive for one to two minutes before the accident occurred. The cause of his incapacitation could not be determined, but a flight surgeon testified to the NTSB that the possible cause of the unresponsiveness could have been a mini stroke or a temporary disturbance of blood supply to the brain, also known as a Transient Ischemic Attack (TIA).¹⁰

Mr. Smith, who had a number of medical conditions (including high blood pressure and coronary heart disease), was taking prescription and over-the-counter medications – some of which caused drowsiness.¹¹ The assistant captain was also taking medications.¹² Mr. Smith later pleaded guilty to knowingly submitting false information to the Coast Guard and was charged with manslaughter. Mr. Smith told the court that he did not report his medications to the Coast Guard because he was afraid it would jeopardize his job.¹³

In the Marine Accident Report on this allision, the NTSB made several recommendations related to the Coast Guard's medical procedures. These recommendations are noted below.

1. Revise regulation 46 C.F.R. § 10.709 to require that the results of all physical examinations be reported to the Coast Guard, and provide guidance to mariners, employers, and mariner medical examiners on the specific actions required to comply with these regulations (M-05-04).
2. In formal consultation with experts in the field of occupational medicine, review your medical oversight process and take actions to address, at a minimum, the lack of tracking of performed examinations; the potential for inconsistent interpretations and evaluations between medical practitioners; deficiencies in the system of storing medical data; the absence of requirements for mariners or others to report changes in medical condition between

⁹ National Transportation Safety Board (NTSB), *Allision of the Staten Island Ferry Andrew J. Barberi St George, Staten Island, New York, October 15, 2003*, at 1.

¹⁰ NTSB *Finds Pilot Blackout, City To Blame In Ferry Accident, Marine Log*, <http://www.allbusiness.com/transportation-equipment-manufacturing/ship-boat-building/422692-1.html> (last visited on July 6, 2009).

¹¹ NTSB, *Allision of the Staten Island Ferry Andrew J. Barberi, St George, Staten Island, New York*, (October 15, 2003) at 13.

¹² *Id.*, at 14.

¹³ Mike Hvozda, *NYC ferry assistant captain pleads guilty to manslaughter, lying*, *USA Today* (August 4, 2004).

examinations; and the limited ability of the Coast Guard to review medical evaluations made by personal health care providers (M-05-05).¹⁴

On September 28, 2006, the Coast Guard published a notice in the *Federal Register* indicating that it was “exercising authority currently set forth in Coast Guard regulations to require all first class pilots on vessels greater than 1600 GRT, and other individuals who ‘serve as’ pilots on certain types of vessels greater than 1600 gross registered tons [GRT], to provide a copy of their annual physical exam to the Coast Guard.”¹⁵ In that notice, the Coast Guard instructed pilots to submit their physical examination report to an REC. The notice further stated that the “report of physical examination will be reviewed by the Coast Guard in accordance with the standards in 46 C.F.R. § 10.205(d), as supplemented by the guidance contained in Navigation and Vessel Inspection Circular [NVIC] 2-98.”¹⁶

Allision of the Cosco Busan with the San Francisco-Oakland Bay Bridge

On November 7, 2007, the *M/V Cosco Busan* “allided with the fendering system at the base of the Delta tower of the San Francisco-Oakland Bay Bridge,” resulting in a spill of about 53,500 gallons of fuel oil into San Francisco Bay.¹⁷

The Coast Guard and the NTSB both completed investigations of this allision – and both noted that one contributing factor to the accident was what the Coast Guard called the pilot’s “significant health problems” and his use of “medications that individually had the potential to medically disqualify him to hold Coast Guard-issued Merchant Mariner Credentials.”¹⁸ The NTSB also noted as a contributing factor “the U.S. Coast Guard’s failure to provide adequate medical oversight of the pilot in view of the medical and medication information that the pilot had reported to the Coast Guard.”¹⁹ Echoing that finding, the Coast Guard’s investigation noted that “[t]here is evidence that the Coast Guard’s procedures for review of annual pilot physicals at the time of the accident were inadequate. After publication of the Federal Register Notice requesting pilots to submit their annual physicals, the NMC did not issue new policy or work instructions specifically for review of these physicals.”²⁰

According to the Coast Guard’s *Cosco Busan* report, the service had granted the pilot a waiver for a medical condition in 1999, but had failed to place a waiver statement on the pilot’s license;²¹ had the statement been placed, it would have read, “[a]ny deterioration of a waived medical condition shall be immediately reported to the nearest REC.”²² The waiver was subsequently

¹⁴ *Id.*, at 73.

¹⁵ *Exercise of Authority To Require Pilots To Submit Annual Physical Examinations*, 71 Fed. Reg. 188, 56999 (Sept. 28, 2006).

¹⁶ *Id.*

¹⁷ NTSB, *Allision of Hong Kong-Registered Containership M/V Cosco Busan with the Delta Tower of the San Francisco-Oakland Bay Bridge, San Francisco, California, November 7, 2007*, at 1.

¹⁸ Coast Guard, *Report of Investigation Into the Allision of the COSCO BUSAN with the Delta Tower of the San Francisco-Oakland Bay Bridge in San Francisco Bay on November 7, 2007*, at 29.

¹⁹ NTSB, *Allision of Hong Kong-Registered Containership M/V Cosco Busan with the Delta Tower of the San Francisco-Oakland Bay Bridge, San Francisco, California, November 7, 2007*, at 136.

²⁰ Coast Guard, *Report of Investigation Into the Allision of the COSCO BUSAN with the Delta Tower of the San Francisco-Oakland Bay Bridge in San Francisco Bay on November 7, 2007*, at 29.

²¹ *Id.*, at 22.

²² *Id.*

renewed when the pilot renewed his license in 2004; again, no waiver statement placed on the license.²³

In accordance with the Coast Guard's September 2006 notice that all pilots should submit the results of their annual physicals, the Coast Guard's *Cosco Busan* report indicates that the pilot on board the *Cosco Busan* at the time of the accident had submitted to the service the results of his annual exam dated January 18, 2006.²⁴ However, according to the Coast Guard's *Cosco Busan* report, "[t]here is no evidence in the file or in the Merchant Mariner Licensing and Documentation (MMLD) System that the physical was reviewed by an evaluator at REC San Francisco, nor were there any records indicating the physical was sent to the NMC for a medical review;" that said, the Coast Guard notes in its *Cosco Busan* report that at that time, "there were no specific policies or work instructions requiring an entry into the MMLD system, or any other method of recording review of annual physicals."²⁵

Again the next year, on January 19, 2007, the pilot submitted his annual physical results to the NMC; however, the Coast Guard *Cosco Busan* report notes that "this physical included significant information affecting Captain [blacked out] qualifications as a pilot that were potentially disqualifying, and should have been referred to the NMC for medical evaluation."²⁶ Nonetheless, "[t]here was no evidence in the file or in the MMLD that the physical was reviewed by an evaluator at REC San Francisco, and there was no record of the physical being sent to the NMC for a medical review."

As previously discussed, the NTSB had made a number of recommendations to improve the Coast Guard's oversight of mariner fitness for duty following the Staten Island Ferry *Andrew J. Barbieri* accident. In its report on the *Cosco Busan*, the NTSB states that it "has reviewed NVIC 04-08 (the Coast Guard's instructions on mariner fitness assessments issued in September 2008 – see below) and has found it responsive to much of what the Safety Board called for in Safety Recommendation M-05-5."²⁷ The NTSB also commends the Coast Guard's centralization of the review of mariner medication evaluation results.²⁸

However, the NTSB notes that the Coast Guard "has not . . . taken action with regard to one deficiency noted in Safety Recommendation M-05-5, that is, the lack of a requirement for mariners to report changes in their medical condition between examinations."²⁹ The NTSB notes that the period between required medical evaluations for mariners other than pilots is five years – a period during which the NTSB says "considerable changes in a mariner's medical status or medication use can take place."³⁰ The NTSB also notes that "[t]he absence of a requirement mandating the reporting of substantive changes in medical condition or medication use can thus

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.*, at 23.

²⁶ *Id.*, at 23.

²⁷ NTSB, *Allison of Hong Kong-Registered Containership M/V Cosco Busan with the Delta Tower of the San Francisco-Oakland Bay Bridge, San Francisco, California, November 7, 2007*, at 122.

²⁸ *Id.*, at 122.

²⁹ *Id.*

³⁰ *Id.*

allow a mariner with known potential for cognitive or physical performance degradation to serve in a safety-critical position on a vessel in any U.S. waterway.”³¹

Navigation and Vessel Inspection Circular 04-08

On September 28, 2006, the Coast Guard announced the availability of “a draft Navigation and Vessel Inspection Circular [NVIC] to replace the existing NVIC 2-98;” according to the notice, the draft NVIC “contains revised guidelines for evaluating the physical and medical condition of applicants for . . . credentials.”³²

On September 15, 2008, the Coast Guard issued the final version of NVIC 04-08, which “provides guidance for evaluating the physical and medical conditions of applicants for merchant mariner’s documents (MMDs), licenses, certificates of registry and STCW endorsements, collectively referred to as ‘credentials.’”³³ NVIC 04-08 replaced NVIC 2-98 and two earlier NMC policy letters (11-98 and 4-99) regarding mariner medical issues.

Under NVIC 04-08, a mariner’s medical examination can be conducted by any licensed physician, physician’s assistant, or nurse practitioner.³⁴ NVIC 04-08 states that “Medical personnel who conduct examinations of applicants for credentials, and Coast Guard personnel who review applications for credentials should use the information in this NVIC to ensure a complete and appropriate physical exam is conducted.”³⁵

The Coast Guard notes that the NVIC “details the specific medical conditions that may be subject to further review, and the recommended data for evaluation of each condition to determine fitness for services. It also details physical ability guidelines and acceptable vision and hearing standards. The specificity of this NVIC is necessary to reduce the subjectivity of the physical and medical evaluation process and promote more consistent evaluations.”³⁶

Enclosure four addresses medications utilized by mariners. It states that “[c]redential applicants who are required to complete a general medical exam are required to report all prescription medications prescribed, filled or refilled and/or taken within 30 days prior to the date that the applicant signs the CG-719K or approved equivalent form. In addition, all prescription medications, and all non-prescription (over-the-counter) medications including dietary supplements and vitamins, that were used for a period of 30 or more days within the last 90 days prior to the date that the applicant signs the CG-719K or approved equivalent form, must also be reported.”³⁷

At the present time, the NMC receives every physical report submitted by a mariner. Each report is subjected to an initial “pre-screening” conducted by a medical technician to identify those reports that indicate a mariner has a medical condition that requires closer examination to assess fitness for duty. Those found to need additional screening are reviewed by a medical professional such as a physician’s assistant or nurse practitioner.

³¹ *Id.*

³² *Id.*, at 56998.

³³ Coast Guard, *Navigation and Vessel Inspection No. 04-08*, (September 15, 2008) at 1.

³⁴ *Id.*, at 1-3.

³⁵ *Id.*, at 2.

³⁶ *Id.*

³⁷ *Id.*, at 4-1.

Enclosure three provided with NVIC 04-08 lists 201 medical conditions subject to further review together with recommended evaluation data that the medial practitioner examining a mariner who has one of the conditions should collect. In those cases in which the NMC has not received enough data to enable an adequate assessment of the mariner’s fitness for duty, the NMC will request additional information from the mariner and his/her physician.

The Coast Guard reports that the top five grounds for denial of a credential are:

- Implantable cardiac defibrillators or cardiomyopathy;
- Medications such as chronic use of narcotics/amphetamines/benzodiazepines (xanax, valium etc.);
- Uncontrolled diabetes;
- Mental health issues such as psychotic disorders and uncontrolled bipolar disorder; and
- Uncontrolled sleep disorders.³⁸

Enclosure six provided with NVIC 04-08 outlines the medical review process that “applies to mariners who do not meet the physical or medical standards for a credential as contained in references (a) through (d) and/or who have a medical condition specified in this NVIC.”³⁹ According to Enclosure six, “[t]he NMC will review all medical or physical conditions subject to further review.”⁴⁰ Enclosure six indicates that a variety of information will be reviewed to determine the applicant’s fitness for duty; the Enclosure further indicates that “[i]n all cases, the information should include a narrative from the cognizant medical practitioner describing the condition(s), prognosis, any restrictions, medications prescribed for the condition(s), and any side effects from the medications that the applicant may experience.”⁴¹ After reviewing the relevant information, the NMC will determine whether the individual is medically fit to hold a credential, or whether the person should receive a medical waiver (and/or whether “limitations and/or other conditions for issuance of the credential” should be applied).⁴²

Medical waivers for merchant mariners are addressed in 46 C.F.R. § 10.215(g), which states:

Where an applicant does not possess the vision, hearing, or general physical condition necessary, the Coast Guard, after consultation with the examining licensed physician, licensed physician assistant, or licensed nurse practitioner may grant a waiver if extenuating circumstances warrant special consideration. An applicant may submit to the Coast Guard additional correspondence, records, and reports in support of a waiver. In this regard, recommendations from agencies of the Federal Government operating government vessels, as well as owners and operators of private vessels, made on behalf of their employees, will be given full consideration. Waivers are not normally granted to an applicant whose corrected vision in the better eye is not at least 20/40 for deck officers or 20/50 for engineer officers.

³⁸ Coast Guard, *A Mariner’s Guide to NVIC 04-08: Medical and Physical Evaluation Guidelines for Merchant Mariner Credentials*.

³⁹ *Id.*, at 6-1.

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² *Id.*, at 2.

Importantly, NVIC 04-08 Enclosure six indicates that if a waiver is granted “certain conditions may be placed on the mariner in order to maintain the wavier;”⁴³ however, nothing indicates that conditions are necessarily placed on a mariner when a waiver is granted. Enclosure six continues that if conditions are placed, “[t]hese conditions may include, at a minimum, that any deterioration of a waived medical condition shall be immediately reported to the Coast Guard,” and that “[w]here the condition is progressive, the waiver may require the mariner to submit medical exams and/or tests at varying intervals to track the ongoing status of the waived medical condition.”⁴⁴ However, mariners “have the right to appeal any conditions placed on a waiver in accordance with 46 C.F.R. subpart 1.03.”⁴⁵ If the mariner does not comply with the conditions placed on the waiver or if the medical condition for which the waiver was granted deteriorates, the Coast Guard can take administrative action against the credential, including seeking the suspension or revocation of the credential.⁴⁶

If at the time a person applies for a new or renewal MMC the Coast Guard determines the applicant is medically unfit to hold the credential, the Coast Guard will not issue or renew the credential.

The Coast Guard has indicated that from the beginning of 2009 through September 8, 2009, approximately 56,000 credentials have been issued; only 158 mariners have been denied a credential because they were deemed medically unfit for duty. As of October 2, the Coast Guard had received 11 appeals related to the denial of a credential due to medical conditions. Appeals are reviewed by physicians at the Public Health Service who are not associated with the NMC.

As previously discussed, mariners who hold a credential to serve as pilot of a vessel over 1,600 gross tons are required to submit the results of an annual physical. However, while the NMC is creating a centralized database of credentialed mariners as it issues MMCs – and the database will be searchable by type of credential – it will be five years until all existing credentials are renewed (and re-issued as MMCs), and thus five years until the database is fully populated. At the present time, the Coast Guard does not have the ability to identify at any given time those pilots who have not submitted the results of their annual physical – or to remind pilots that a physical is due. Pilots who do not submit their required annual physical results are subjected to penalties after the failure to submit is identified.

Because a pilot’s credential remains valid for five years (like all credentials), if at the time a pilot submits the results of an annual physical exam the pilot is determined to be medically unfit for duty, the Coast Guard must initiate suspension and revocation proceedings against the pilot’s credential. Per 46 U.S.C. § 7703(5), a mariner’s license, certificate of registry, or MMD can be suspended or revoked if the mariner is “a security risk that poses a threat to the safety or security of a vessel or a public or commercial structure located within or adjacent to the marine environment.” The license, certificate of registry, or MMD may be reissued to the mariner if the Secretary decides that the issuance is compatible with the requirement of good discipline and safety at sea and the mariner provides satisfactory proof that the bases for revocation are no longer valid.⁴⁷

⁴³ *Ibid.*

⁴⁴ *Id.*

⁴⁵ *Id.*, at 3.

⁴⁶ *Id.*

⁴⁷ 46 U.S.C. § 7701.

On June 10, 2009, the Coast Guard published a notice in the *Federal Register* indicating that it is “establishing the Merchant Mariner Medical Advisory Committee (MMMAC) under authority of 6 U.S.C. § 451.”⁴⁸ According to the notice, the MMMAC “will be established as a discretionary advisory committee” that will “advise, consult with, and make recommendations to the Secretary [of Homeland Security] on matters relating to the medical evaluation process and evaluation criteria for medical certification of merchant mariners.”⁴⁹ The MMMAC will meet at least once a year and it may establish subcommittees and working groups that may meet to consider specific issues.⁵⁰ The MMMAC will be comprised of 14 members, 10 of whom “shall be health-care professionals with particular expertise, knowledge, or experience regarding the medical examination of merchant mariners or occupational medicine,” and four of whom “shall be professional mariners with knowledge and experience in mariners’ occupational requirements.”⁵¹

Mariner Medical Evaluation Forms

In a notice dated July 23, 2009 and entitled “Updated Merchant Mariner Medical Evaluation Forms,” the Coast Guard announced that it was issuing a new version of the CG-719K Merchant Mariner Credential Medical Evaluation Report form and the CG-719K/E Merchant Mariner Evaluation of Fitness for Entry Level Ratings form.⁵² The notice indicated that the new forms will “more clearly align the Merchant Mariner Credentialing process with the policies set forth by Navigation and Vessel Inspection Circular 04-08.”⁵³ The notice also stated that “[i]f these forms are properly and completely filled out and additional information mandated/requested by the NVIC/Instructions is provided, mariners, even those with medical conditions, should expect to see reduced processing times for their applications.”⁵⁴

The July notice indicated that the new forms would be available on the NMC website on or before September 1, 2009 and would be available for use on October 1, 2009. The notice indicated that the results of mariner medical exams completed on or after January 1, 2010 must be recorded on the new form.

The notice announcing the roll-out of the new CG-719K and CG-719K/E forms was withdrawn only a few days after it was issued. The Coast Guard reports that it now anticipates releasing the new forms in early November. The service has not yet decided how long after their date of release the forms will be required to be used by mariners.

International Labor Conventions

The International Labor Organization’s Convention 147 (Convention 147), the “Convention Concerning Minimum Standards in Merchant Ships,” came into force on November 28, 1981; it was revised in 2006 by the Maritime Labor Convention. The United States ratified this convention on

⁴⁸ *Merchant Mariner Medical Advisory Committee*, 74 Fed. Reg. 110, 27557 (June 10, 2009).

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² Coast Guard, *Updated Merchant Mariner Medical Evaluation Forms*, http://www.sunymaritime.edu/documents/2009/8/10/Medical_Forms_Bulletin.pdf (last visited on October 1, 2009).

⁵³ *Id.*

⁵⁴ *Id.*

June 15, 1988; it has now been ratified by 55 nations. This Convention, which “applies to every sea-going ship, whether publicly or privately owned, which is engaged in the transport of cargo or passengers for the purpose of trade or is employed for any other commercial purpose,”⁵⁵ requires the countries that have ratified it to establish laws specifying, among other things, safety standards, on-board working conditions, and mariner training standards for their vessels. Countries that have ratified this convention must also ensure that its laws and regulations are “substantially equivalent” to those Conventions and Articles of Conventions that are referenced in the Appendix to Convention 147.⁵⁶

Among the Conventions that are included in the Appendix is Convention 73, the “Convention Concerning the Medical Examination of Seafarers,” which came into force on August 17, 1955. Among other provisions, this Convention, which also applies to publicly and privately owned sea-going vessels, requires that medical certificates issued to mariners “shall remain in force for a period not exceeding two years from the date on which it was granted.”⁵⁷

Because medical approvals granted by the Coast Guard to U.S. mariners other than pilots (who are required to submit the results of a physical exam on an annual basis) are valid for five years, the United States is not in compliance with the requirements of Convention 147 and its related Convention, number 73.

The Coast Guard has indicated that it is currently discussing whether, how, and when to begin requiring mariners (other than pilots) to undergo physical examinations every two years. Among other issues, the Coast Guard is assessing whether such a requirement should apply only to those mariners who work under international credentials (i.e., on sea-going voyages) or whether it should apply to all mariners, including those who work only in domestic waters.

IV. CREDENTIAL PROCESSING BACKLOG

Following the consolidation of mariner credentialing services at the NMC, a significant backlog in the processing of these credentials developed. Initially, during the early part of 2009, the backlog was due to slow movement of applications through the medical evaluation process. In a report issued on April 9, 2009, the Coast Guard indicated that the NMC’s average processing time for medical evaluations had been more than 90 days in February 2009; that number was reduced to 19 days by April 2009.⁵⁸

At the time of the July hearing by the Subcommittee on Coast Guard and Maritime Transportation, the Coast Guard indicated that the average processing time through the medical review process was about five days and the processing backlog in the medical evaluation stage had been resolved after personnel resources were “surged” to expedite the medical review process.

However, at approximately the same time the backlog in medical reviews was resolved, the NMC began the process of issuing MMCs – and encountered glitches in software and related

⁵⁵ International Labor Organization, *Convention Concerning Minimum Standards in Merchant Ships*, at 1.

⁵⁶ *Id.*, at 2.

⁵⁷ International Labor Organization, *Convention Concerning the Medical Examination of Seafarers*, at 5.

⁵⁸ Coast Guard, *Medical Evaluation Processing Time – A Measured Success*, http://www.uscg.mil/nmc/medical/Medical_Info_Bulletin.pdf (last visited on July 6, 2009).

problems that slowed the physical production of credentials. Seasonal fluctuations – including mariners seeking credentials for summer employment and early applications concomitant to the TWIC compliance date of April 15, 2009 – contributed significantly to the growing backlog.

Additionally, as files moved from the medical review process to be assessed by evaluators to determine that applicants met the criteria (including having required sea service time and having completed required exams) for the credentials for which they were applying, a backlog developed in the professional qualification review. Subcommittee staff who visited the NMC on July 2 were informed that approximately 6,800 applications were awaiting review by a professional qualification evaluator. NMC staff indicated at the July hearing that they hoped to resolve this backlog – while completing all normal daily workloads – by the end of September 2009.

The NMC’s “Monthly Report on the Performance of the Mariner Credentialing Program” for the month of September states that the current inventory of applications at the NMC is 3,014 and that the backlog of applications noted at the July hearing has been eliminated.⁵⁹ The report further states that the “NMC has set a goal of 9,000 applications or less in the system at any given time” and, that per these terms, a backlog will be said to exist only when the number of applications in the system exceeds that target.⁶⁰

The monthly report for September also notes that the average total processing time (meaning the full length of time required to process an application, including the time required by the Coast Guard to move the application through all required reviews as well as time spent waiting for a mariner to respond to requests for additional information or to take an exam) for credential applications was 60 days while the net processing time (meaning total processing time excluding all time spent waiting for a mariner to respond to a request for additional information or to take an exam) was 25.5 days. The target goal for net processing time at the NMC is 30 days.

By comparison, in a report issued on June 29, 2009, the Coast Guard reported that average gross processing time for a credential between the beginning of 2009 and June 23 was 80 days, while the median gross processing time was 54 days (50 percent of credentials processed during that period were processed in 54 or fewer days).⁶¹ That same report indicated that average net processing time was 48 days, and only 35 percent of credential applications were being completely processed in 30 or fewer days.⁶²

PREVIOUS COMMITTEE ACTION

The Subcommittee on Coast Guard and Maritime Transportation met on November 19, 2007, in San Francisco, California, to receive testimony regarding the allision of the *Cosco Busan* with the San Francisco-Oakland Bay Bridge on November 7, 2007.

⁵⁹ Coast Guard, *National Maritime Center’s Monthly Report on the Performance of the Mariner Credentialing Program*, (September 2009).

⁶⁰ *Id.*

⁶¹ Coast Guard, *Mariner Licensing and Documentation (MLD) Quarterly Credential Evaluation Report*, (June 29, 2009) at 1.

⁶² *Id.*, at 2.

On April 10, 2008, the Subcommittee on Coast Guard and Maritime Transportation met to receive a report from the Department of Homeland Security's Office of the Inspector General (DHS IG) entitled "Allision of the M/V COSCO BUSAN with the San Francisco-Oakland Bay Bridge." This report was completed pursuant to a request made by Speaker of the House Nancy Pelosi and Subcommittee Chairman Elijah E. Cummings on December 4, 2007.

On July 9, 2009, the Subcommittee on Coast Guard and Maritime Transportation convened a hearing entitled "National Maritime Center and Mariner Credentials" to examine the new credentialing processes the Coast Guard has recently introduced as well as the backlog in credential applications that had developed at the NMC.

WITNESSES

Rear Admiral Kevin Cook

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United States Coast Guard

Captain David C. Stalfort

Commanding Officer, National Maritime Center
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