



International Organization of
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**Comments Regarding Proposed Navigation Vessel Information Circular:
“Medical and Physical Evaluation Guidelines for Merchant Mariner Credentials.”**

Docket No. USCG 2006-25080

Our organization, the International Organization of Masters, Mates and Pilots (MM&P), represents licensed deck officers employed aboard US-flag commercial vessels sailing offshore, on the inland waterways and on civilian-crewed ships in the government fleet; state pilots; marine engineers; unlicensed seafarers; and maritime industry shore side clerical and service workers. MM&P is the maritime affiliate of the International Longshoremen’s Association (ILA), AFL-CIO.

MM&P has a vital interest in the health and fitness of our seafaring members and the US Coast Guard’s (USCG) administration of its medical review processes. MM&P members will be directly affected by the proposed Navigation Vessel and Information Circular (NVIC) in terms of the cost of compliance, the potential for lost income, and the possibility for loss of livelihood.

We commend the USCG for opening the process of implementing this proposed NVIC to the public. We feel the decision by the USCG to make changes in the medical review process by using the NVIC as a vehicle is a good one because the medical review process is an emergent work and will undoubtedly need to be reworked and refined.

OVERVIEW

On October 15, 2003, the Staten Island Ferry *Andrew J. Barberi*, with crew and passengers on board, allided with a pier at the Staten Island Ferry terminal. There was loss of life and many passengers were injured.

The National Transportation Safety Board (NTSB) investigated the accident and issued the agency's recommendations in a report released on March 8, 2005. The NTSB recommended that the USCG review its medical oversight processes. The NVIC is a result of the USCG's review.

While we agree that the current system of medical review needs to be improved, we believe the proposed NVIC is an excessive response toward making improvements and carries an excessive impact on the community of mariners from all sectors of the maritime industry.

These comments are given in two sections. The first is meant to be general comments while the attachment contains comments regarding specific medical conditions in Enclosure (3).

Concerns Regarding This Process

While we commend the USCG for opening this NVIC to public comment, we wish to point out the NVIC process is not subject to important regulatory requirements that would help the USCG to understand the impact of this proposal. Specifically, this process does not require the USCG to contemplate economic effects or the impact of the NVIC upon operations. Therefore, the USCG is not so closely engaged with the industry and lacks critical sensitivity to impacts its proposal will have in terms of cost and the potential to drive experienced mariners out of or prospective mariners away from the profession. These effects will be manifested not only directly through disqualification but also indirectly by creating a barrier to entry. The effect of this will potentially be felt in a decrease in the number of mariners available for support of national defense, national emergency sealift and the general waterborne commerce of our nation.

Since there is no requirement for the USCG to estimate the cost to the industry of this NVIC, we feel the USCG has underestimated the number of mariners who will be affected, the number of requests for medical waivers resulting, the number of staff and the level of resources the USCG will need to dedicate to processing waivers.

So while we commend the USCG for accepting comments on the NVIC, we have serious concerns that the USCG does not have an accurate notion of the true impact of this policy. Therefore, it is critically important that the USCG make a more determined effort to listen to the industry on this issue and strive for a reasonable medical policy.

RIGHT TO PRIVACY AND OTHER PROTECTIONS

The right to privacy is a basic entitlement that is protected by federal law. We have received several comments from members that what might be described as protected health information under the Health Insurance Portability and Accountability Act (HIPAA) appears on credentials issued by the USCG. The opening discussion of the NVIC contains no statement of policy relating to a mariner's right to privacy. Since the NVIC is meant to be guidance for those involved in the medical review process, it should contain strong assurances that a mariner's medical information will be protected in compliance with the requirements of HIPAA.

Employers, medical examiners, and reviewing personnel within the USCG must also comply with the provisions of the Americans with Disabilities Act (ADA) as it applies to

discrimination on the basis of disability. We are concerned that the discussion of the NVIC does not contain strong enough guidance on this issue. Quite the opposite for, in fact, paragraph 5.n. contains language to employers that states: "Nothing in this NVIC precludes marine employers from establishing more rigorous medical or physical ability standards to promote or ensure the safety of life, property and the marine environment". We feel employers should be strongly cautioned and reminded of their obligations under the ADA which requires employers to show that their "rigorous medical or physical ability standards are reasonable and related to the job.

Absent due respect for the existing protections of individual rights under the law, we are concerned that employer-imposed standards will lead to damaged labor relations, increased cost to employers, mariners and their representatives, and lost income for those effected mariners.

EXCESSIVE REQUIREMENTS FOR INFORMATION

The NVIC proposes 202 "potentially disqualifying" conditions that will require extensive evaluation before issuance of a Merchant Mariner's Document (MMD), a license, certificate of registry or STCW endorsement (collectively "credentials"). We feel the list is too extensive and casts an overly wide net that will require many mariners to apply for medical waivers.

For instance, several of the potentially disqualifying conditions require information regarding medical treatment, especially treatment for psychological conditions, that seems to be required solely to identify the use of medications. This information is already requested under "Potentially Disqualifying Medications" (Enclosure 3, pg. 30).

In addition, it is difficult for us to see how several of the conditions in the NVIC would put a mariner at risk of sudden incapacitation or reduce the mariner's ability to perform routine or emergency duties. In fact, one could make a far reaching assumption for many of the conditions listed in Enclosure (3) and say each might cause a "significant impairment of functional status" or present "a risk of sudden incapacitation". We feel that the USCG should develop its list of conditions by considering the actual vs. the theoretical risk that a mariner might be suddenly incapacitated.

Furthermore, pilots and docking masters are not required to "Handle ship's stores" or perform "General vessel maintenance". Therefore, the ability of these individuals to perform their duties should not be evaluated based upon these criteria.

COST TO THE MARINER AND TO THE INDUSTRY

The evaluations, consultations and documentation required in Enclosure (3) to obtain a waiver are nothing less than awesome and will require comprehensive testing that will be both expensive and time consuming. The increasing cost of health care makes it impossible to predict how much more mariners and their health care plans will have to pay in connection with this NVIC going forward.

In our experience for the year 2005, the MM&P Health and Benefit Plans were charged nearly \$11.1M for the evaluations and consultations associated with the various conditions listed in the NVIC. The average cost per claim was \$609 with each MM&P member paying an average \$278 per claim. The figures for 2006, as of October 31, are comparable.

Acknowledging that some of these costs would be paid by the plan regardless of the NVIC, we expect the required additional evaluations and consultations to increase these costs significantly over time. We also anticipate that much of the cost the mariner may have to bear out-of-pocket because some health care plans do not cover procedures that are not diagnostic or associated with ongoing treatment.

The MM&P is proud of our relationship with the employer trustees who jointly administer our plans and help to keep our costs down. However, despite these efforts, the increased costs associated with this NVIC will have to be passed on to our employers who are already operating under greater burdens than their foreign competitors.

We feel that this alone should be enough justification for granting examining physicians more discretion than allowed by the NVIC so as to reduce the amount of documentation the mariner will need to present to the USCG.

EFFECTS OF ANTICIPATED BACKLOGS

It is inevitable that the NVIC will increase the volume of applications for medical waivers and bog down the process. In fact, as explained below, the USCG acknowledges this.

We are concerned that the increased volume of applications will result in backlogs that will cause mariners to lose income while waiting for their applications to be processed. In fact, the USCG states in Enclosure (5) that the Regional Examination Centers (REC's) will return any requests for waivers that are not properly documented. Given that the medical review process will begin at the REC's and mariners and the industry are already frustrated with the existing process, there will be a cost to the mariner in terms of lost income due to delays. This cost can not be determined. However, it will be severe for those individuals who are affected by it. Employers who must fill billets will also feel this effect of the NVIC.

In addition, USCG representatives have stated in public forums that of the estimated 200,000 US mariners, approximately 2% or 4,000 apply for medical waivers each year. USCG representatives, in the same public forums have estimated, this NVIC will result in about a 10% increase in the number of waiver applications bringing the average number of expected applications to 4,400 per year.

According to the USCG, 7 individuals at the National Maritime Center (NMC) will be assigned to process waivers. We understand that 3 of these individuals will be evaluators with the authority to make decisions.

That leaves an average of nearly 1,467 applications for waivers per evaluator. Given a total of about 241 working days in each year, that brings the average number of applications to be processed by each evaluator to 6 per day. We are concerned that this number may be more than one person can handle.

The Medical Review Process, given in Enclosure (5) intends to lighten the burden on the evaluators at NMC by pushing it downstream to the REC's. We repeat that the industry's experience with the REC's has been less than favorable. We also point out that this does not eliminate the burden or reduce it at all. It merely shifts it to others in the process.

UNINTENDED CONSEQUENCES

Increased Liability of Mariners

Regarding the list of Potentially Disqualifying Medications in Enclosure (3), it is unclear to us what liability will extend to the mariner for failing to disclose the use of over-the-counter drugs, herbal supplements, and prescription medications. Mariners are now being denied their licenses and documents for failure to disclose even the most irrelevant and dated violations. For instance, recently an MM&P retiree was denied renewal of his license for a misdemeanor he committed in 1954. Our concern is that the same heavy-handed, "zero tolerance" overregulation will put mariners at jeopardy of losing their documents.

Increased Retirements

The MM&P also considers as a cause for concern the prospect of an accelerated rate of retirements.

The mariner population is aging and as part of the normal process of aging, many are beginning to cope with the usual physical conditions. Most of these conditions are manageable. However, considering the usual burdens of going to sea like increased workloads, criminalization, and the denial of shore leave in many ports, we feel the uncertainty of the medical review process will lead mariners to retire at earlier.

This could have two unintended consequences. First, it may lead to a dilution of experience as senior mariners leave the industry. Second, it may also place an unexpected and additional burden on industry-wide pension funds requiring higher employer contribution rates at a time when the employers are facing foreign competitors who do not have the same cost structure.

We feel this is an example of the USCG's lack of understanding regarding the various impacts of the NVIC.

Mariners Declining to Seek Treatment

Perhaps the most serious unintended consequence of the NVIC is one that it is meant to prevent. We have the gravest concern that the kind of overreaching regulation contemplated in the NVIC is a powerful disincentive for those individuals who need treatment to seek it or to continue receiving it in order to avoid the uncertainty and risk of the waiver process.

For instance the NVIC itself illustrates that an individual who takes antidepressants for smoking cessation will require a waiver before the USCG will issue a credential. Another example is the mariner's use of anti-motion sickness medication. We ask if the USCG intends that those mariners who need such aids will be denied their livelihoods.

Consequently, we see a potential serious impact upon operations to the extent that mariners with totally unidentified medical conditions will be working on board all types of vessels in all trades. Indeed, the mariner who shuns a visit to the doctor may not know of a potentially serious medical condition.

CONCLUSION

We wish to recall that the driving force behind this NVIC is the *Andrew Barberi* collision and the findings and recommendations of the NTSB. We are fully aware of the political implications of that accident and the pressure on the USCG to take action. We, as a part of the maritime industry, feel similar pressures to make improvements and so elevate the public's perception of our industry.

Nonetheless, that accident was the direct result of a procedural failure to have at least two qualified officers in the wheelhouse participating in the navigation of the vessel during a critical maneuver. This, we strongly believe, is in violation of good seamanship and the principals of bridge resource management which dictate that bridge watch teams should be supplemented with the appropriate personnel during critical operations. In addition, the examining physician falsified the Assistant Captain's medical report against all legal and ethical practice.

It seems the key to preventing these types of accidents lies in addressing what causes them. Therefore, we feel the USCG should, in consultation with stakeholders in the industry:

1. Review its policies regarding manning levels for high risk operations.
2. Strictly enforce hours of work regulations and interpret them on the side of providing adequate rest for crews.
3. Make thoroughly clear to examining physicians that they are breaking the law when they falsify documents.

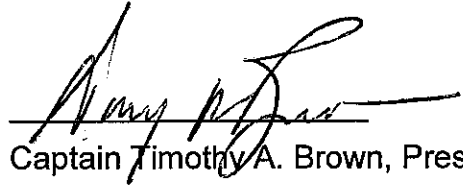
The solution is not medical policy that mandates a single superman at the helm who is, presumably, physically and mentally perfect. Indeed, even the most rigorous physical examination is no guarantee that an individual will not suffer a physical impairment at the wrong moment.

Instead, there should always be an appropriately certificated and trained rating or officer in the wheelhouse or engine room to support the conning and maneuvering officers. Any incapacity should then be detected in time to sound an alarm or take appropriate action to avoid an accident.

We agree that the existing system for medical evaluations was flawed in certain respects. However, we strongly maintain that the new system envisioned in the NVIC recognize the privacy rights of individuals and, in the interest of fairness, give greater discretion to examining physicians to make case-by-case determinations. In our view, this is the way to avoid the unintended consequences we discussed earlier in these comments.

Moreover, we feel the USCG should become aware that its many demanding regulatory requirements make the management of the pool of mariners, an important national asset, difficult. The USCG should adopt policies that will allow those mariners who are able to manage their medical conditions and operate safely to continue in the profession. We feel that it is better to impose restrictions on a license or MMD or require closer medical supervision than it is to drive experienced men and women from service.

We look forward to our continuing involvement in the review process and the successful implementation of these guidelines to achieve these goals.

A handwritten signature in black ink, appearing to read "Timothy A. Brown", written over a horizontal line.

Captain Timothy A. Brown, President
IOMMP, ILA, AFL-CIO

Attachment 1

Specific Comments on Medical Condition and Evaluation Data

Our examination of several of the Medical Conditions and Evaluation Data listed in Enclosure (3) lead us to believe that examining health care professionals should have more discretion as to the extent of consultation and testing. In other words, many of the *Evaluation Data* may not be completely necessary and the degree of testing is often anticipatory of findings from some of the basic and more initial testing.

A discussion of some the specific Medical Conditions listed in Enclosure (3) follows:

Condition 3: "History of tumor within the last 5 years"—add "where there is loss of structures vital for speech, swallowing and equipment fit." Waiver should only be required where the above applies. Absent this, there should be no interest by the USCG. Additionally, "Radiation Therapy will significantly impair chances of waiver" signifies a belief that the tumor is of the more pernicious kind. Current practice and outcome data has frequently added radiation to the treatment plan. Perhaps, "Radiation Therapy will require a more careful examination of records and a more consultative process for a waiver" would better serve.

Condition 10: "History of episodic disorders of dizziness or disequilibrium"—add "within the last five (5) years." Otherwise, it is covered under Item # 5.

Condition 16: "Refractive Surgery within the past 6 months." *Evaluation Data* should simply require a statement from the health care professional that they have been examined 6 months post surgery and is free of "adverse effects or complications." Allow the health care provider to decide what testing is required to sign such a certificate.

Condition 23: "Glaucoma (treated or untreated)" and includes "ocular hypertension or glaucoma suspect" While glaucoma can affect visual acuity and night vision, its presence or suspect [along with ocular hypertension] is frequently no longer diagnosed solely via tonometer readings. Measurement of corneal thickness is thought to modify interpretation of these pressures. Some ophthalmologists feel the appearance of the optic nerve heads and nerve fiber layer, along with results of visual fields testing is more diagnostic than simply Goldman applanation tonometry. Finally, "ocular hypertension or glaucoma suspect" should be evaluated on the frequency specified by the ophthalmologist consulted.

Condition 29: "Disparity in size..." It is unclear if this refers to physiologic anisocoria; of which an estimated 20% of the U.S. population is thought to have and, is benign absent trauma, cranial nerve or parasympathetic problems. If it does not refer to physiologic anisocoria, it should so state.

Condition 30: "Nystagmus"—Place last sentence at beginning of *Evaluation Data*.

Condition 48a: "History of tumors of the breast within the last 5 years"—It is unclear how such history relates to "public safety risks associated with sudden incapacitation" and ability to "perform their duties not only on a routine basis but also in an emergency." Suggest add to *Evaluation Data*, "when examining health care professional feels may impact ability to perform duties" an "Oncology consultation...if history of surgery"

Condition 50: "Pneumothorax within past 3 months...recurrent pneumothorax"—Add "within three months" before "is considered disqualifying for medical...Otherwise, it negates the "within past 3 months" in *Medical Condition*

Conditions 53 & 54: "Left and Right Bundle Branch Block"s (BBB)—While both have a portion of people with 12 lead ECGs showing a BBB that are non-pathological and normal for them, they can indicate a more serious problem underlying; especially the Left BBB. The required *Evaluation Data*, especially for RBBB, is perhaps overly cautious and aggressive. Absent data on U.S. maritime crews that serious cardiac emergencies occur at a frequency greater than "rarely, these *Evaluation Data* should allow for more examining health care professional discretion.

Condition 56: "Premature Atrial Contractions"—absent significant risk factors, other cardiac dysrhythmias or symptoms, they are often frequently found as a result of excess caffeine intake and/or stress. The examining health care professional should be allowed to exercise judgment and decide if further testing is needed. The USCG is not the guardian of a mariner's current or speculative future personal health and should limit data collection to areas that are predictive of job related problems mentioned above in #3 of General Comments.

Condition 63: "History of Supraventricular Tachycardia..."—Suggest add, "Within past five (5) years" SVT episodes that are not accompanied by other cardiac related symptoms and that have not occurred for five years should be allowed to be evaluated at the discretion of the examining health care professional.

Condition 64: "History of syncope,...last five years"—Suggest add, "when thought to be cardiac related."

Condition 80: "Pericarditis,...myocarditis"—Suggest add, "within last five (5) years." The causes are varied and may not consistently indicate serious cardiac disease processes.

Condition 99: "History of ...last five years"---Suggest subsume under #98 above. Focus should be upon functional impairment and not speculative health.

Conditions 106-108: Focus should be upon applicant's physical limitations and medications and should only be the focus if unable to perform routine and emergency duties.

Condition 115: "History of Gender Reassignment"—Suggest add, "within past 12 months" This time frame should allow for judgment of response to hormonal adjustment and maintenance. To assume that a mariner automatically will have a psychological "condition" is prejudicial.

Conditions 126-129: Suggest add, "causing significant functional impairment."

Condition 131: "History of Intervertebral...5 years." The requirement for being "asymptomatic" and "must be taking **no** [emphasis added] medication" is too encompassing. The focus is upon functional impairment and medications which will impair routine and emergency duties or cause sudden incapacitation.

Condition 135: History of...last 10 years." Suggest change to last five (5) years due to consistency with other conditions.

Condition 137: "History of Hodgkin's...last 10 years" It is unclear why the USCG is interested in Hodgkin's Lymphoma for the past 10 years. The diagnosis itself brings

with it a continuing connection with health care professionals but, beyond the acute treatment phase, does not generally impair routine and emergency duties or cause sudden incapacitation.

Conditions 143, 144 & 147: Suggest add within last five (5) years

Condition 150: "Allergic Encephalomyelitis" Only references found were to Experimental Allergic Encephalomyelitis; induced in lab animals to attempt modeling for study of MS.

Condition 153-161: Unclear as to why the degree of detail gained by neuro-psychological testing may be needed by the USCG to determine if a person, who most likely has been functioning as a mariner, can perform routine and emergency duties or be subject to sudden incapacitation.

Conditions 164-165: Suggest add, "within last 5 years".

Conditions 163-167: Same comment on neuro-psychological testing as #153-161 above

Condition 170: "History of ...multiple episodes". While febrile seizures are most common prior to age 5 years, adults do have them but suggest USCG restrict data collection to episodes within the last five years.

Condition 173: "History of Head Trauma...following injury" While significant head trauma can create a host of neurological and behavioral problems [including the potential for secondary concussion syndrome], focus should be on the past five years.

Condition 180: "Adjustment Disorders" Adjustment Disorders are such a broad Axis I category that vary from quite slight (loss of a job, other life event areas) to somewhat more serious. Some clinicians have even informally used the term "Worried Well" to describe many of them. This is an example of the USCG attempt to capture information related to psychotropic medication use [of legitimate concern for public safety] rather than potentially debilitating conditions. Suggest the *Medical Condition* be addended to read, " Adjustment Disorders being treated with medications". Additionally, to restrict status reports to psychiatrists or clinical psychologists negates the thousands of people being treated by State licensed Clinical Social Workers, Marriage & Family Therapists, and Professional Counselors.

Condition 181: "Attention Deficit Disorder" Suggest, as above, addending the *Medical Condition* to read, "Attention Deficit Disorder being treated with medication". It should be noted that the majority of medications prescribed for ADD are not written by psychiatrists; rather, by primary care physicians and other licensed health care providers.

Condition 182: "Bipolar Disorder" The *Evaluation Data* requested is appropriate. However, again, a large number of medications are being prescribed by primary care physicians.

Condition 183: "Bereavement Disorder" There is no such Disorder diagnosis in either the DSM-IV-TR or ICD-9 for "Bereavement Disorder". There is non-diagnostic "V62.82" code for Bereavement which is not subject to mental health treatment. Dysthymic Disorder [300.4) relates to minor depression or periods of decreased mood; which may or may not be treated with medication. If treated with medication, suggest the *Medical Condition* be addended to read, "Dysthymic Disorder being treated with

medication.” Again, much of the prescribing for these types of problems are done by primary care physicians.

Condition 184: “Clinical Depression” The correct term here is *Major Depressive Disorder* (296.xx) with its attendant descriptive explainers. The *Evaluation Data* is appropriate. However, again, much of the prescribing for “Clinical Depression” is being done by primary care physicians. Additionally, to restrict status reports to psychiatrists or clinical psychologists negates the thousands of people being treated by State licensed Clinical Social Workers, Marriage & Family Therapists, and Professional Counselors.

Condition 185: “Psychotic Disorder” This series of diagnoses is (293.xx) associated with a specified medical condition or “Psychotic Disorder NOS (298.9) While the DSM-IV-TR does mention Psychotic Disorders as generally being brief, substance abuse or organically induced; it may be that this *Medical Condition* refers more to the Axis II disorders [it should be noted that Schizophrenia is an Axis I disorder]. Most of these are seen as personality disorders rather than of a psychotic type; however difficult to treat. Many of them respond to psychotropic medications but to say categorically they are “generally not waivable(sic)” does not recognize the current state of the art in psychiatric medicine. They do, clearly, require a waiver process with wording similar to active tumors noted above.

Condition 186: Substance Dependence-Drugs. Delete “cure” and replace with “in remission”. Suggest requirement for demonstration of remission be, “satisfactory completion of an initial course of treatment [residential rehabilitation or intensive outpatient] as directed by SAP, EAP, or certified addiction counselor. Continuing abstinence from drugs and alcohol, outpatient treatment, self-help group progress as also directed and monitored by the SAP, EAP, or certified addiction counselor for a period of no less than twelve months.” Return to work will be required to be by recommendation of SAP, EAP, or certified addiction counselor and MRO.

Condition 187: Substance Dependence-Alcohol. Same as #186 above.

Condition 194: “Diabetes requiring Oral Medication” Suggest graded exercise test [GXT]is un-necessary if other data supports waiver.

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