



U.S. Department
of Transportation
**Federal Aviation
Administration**

Office of the Chief Counsel

800 Independence Ave., S.W.
Washington, D.C. 20591

Memorandum

Date: August 16, 2024

To: Lawrence Fields, Executive Director, Flight Standards Service, AFX-1

From: Laura Megan-Posch, Assistant Chief Counsel for Regulations, AGC-200

Cc: Lynsey Scott, Acting Manager, AGC-240

Subject: Rescinding the Schaffner Legal Interpretation (May 5, 2014)

LAURA JANE
MEGAN-POSCH

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JANE MEGAN-POSCH
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This memorandum memorializes that the Schaffner Legal Interpretation (May 5, 2014) was rescinded as of July 23, 2023.¹ The Office of the Chief Counsel rescinded this Legal Interpretation because it is not supported by current FAA regulations. The Schaffner Legal Interpretation found that a person receiving flight instruction could serve as the pilot in command (PIC) if that person met all other requirements to act as PIC, other than the recent flight experience requirements of § 61.57(a) and (b). The NPRM stated that the Schaffner Legal Interpretation was based on the unsupported conclusion that a flight instructor and a person receiving flight training are not considered passengers to one another. Therefore, the Schaffner Legal Interpretation is no longer valid and may not be relied upon for any purpose. If you require further assistance, please contact my staff.

¹ See Public Aircraft Logging of Flight Time, Training in Certain Aircraft Holding Special Airworthiness Certificates, and Flight Instructor Privileges, 88 FR 41194 (June 23, 2023). This Notice of Proposed Rulemaking (NPRM) rescinded the Schaffner Legal Interpretation 30 days after the NPRM's publication in the Federal Register.



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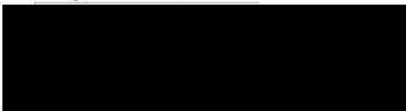
Federal Aviation
Administration

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May 5, 2014

By Regular Mail and Email

Roger R. Schaffner



Dear Mr. Schaffner,

On March 17, 2014, you requested a legal interpretation of the following question:

Can a Certified Flight Instructor (CFI) with an expired medical certificate instruct a student who is a Private Pilot with a current medical certificate and flight review but who is not current to carry passengers per § 61.57(a), or is the CFI under this scenario considered a passenger when instructing?

As a background to the question, you provided the following information:

"My current status is a CFI with an expired medical. No medical application has been refused by the AME. I understand that I can instruct in a number of situations where I am NOT the Pilot In Command (PIC), such as with a licensed Private Pilot with a current Medical and current Flight Review. I also understand that if the Flight Review has lapsed, I cannot give instruction as there would be no PIC in that situation."

In answer to your question, we point out that the Federal Aviation Administration (FAA) has previously issued two legal interpretations that address the issue you raise. These two interpretations are Kortokrax and Murphy. The Kortokrax interpretation, dated August 22, 2006, speaks to the question of whether an instructor is a passenger for the purpose of recency requirements under section § 61.57. The Kortokrax interpretation states in pertinent part:

"We agree that, for purposes of section 61.57(b), an authorized instructor providing instruction in an aircraft is not considered a passenger with respect to the person receiving instruction, even where the person receiving the instruction is acting as PIC. (The instructor must be current, qualified to instruct, and hold a category, class and type rating in the aircraft, if a class and type rating is required.) The instructor is not a passenger because he is present specifically to train the

person receiving instruction. Neither is the person receiving instruction a passenger with respect to the instructor. This training may take place, even though neither pilot has met the 61.57(b) requirements."

Although the Kortokrax interpretation speaks specifically to paragraph (b) of § 61.57, the same logic applies to paragraph (a) of § 61.57, which was cited in your request.

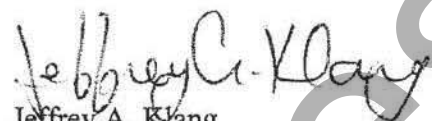
The Murphy interpretation, dated December 22, 2008, addresses the medical certification requirements for instructors. It states in pertinent part:

"If the flight instructor does not act as PIC or required flight crewmember, then the flight instructor is not exercising any pilot privileges and requires no medical certificate. Accordingly, the current regulations require the flight instructor to possess a third-class medical certificate when engaging in flight instruction and acting as PIC or as required flight crew member."

In the light of these two interpretations, under the scenario you provide a CFI with an expired medical certificate may instruct a student who is a Private Pilot with a current Medical Certificate and Flight Review, even if that student is not current to carry passengers per 14 C.F.R. § 61.57(a) because the instructor is not considered a passenger when he is present specifically to train the person receiving instruction.

This response was prepared by Adrienne Wojcik, an attorney in Great Lakes Region, and coordinated with International Law, Legislation & Regulations Division of the Office of Chief Counsel. We hope this response has been helpful to you. If you have additional questions, please contact us at 847-294-7109.

Sincerely,


Jeffrey A. Klang
Regional Counsel