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Coast Guard Hearing Office

*“Hearing Office is our Name,
Maritime Safety and Security is our Aim”*

Hearing Office Mission: Adjudicate civil penalty cases. The civil penalty process is remedial in nature. Its goals are to gain compliance with statutes and regulations the Coast Guard enforces and to deter future violations. A fair and informal administrative process promotes maritime safety, security and environmental protection.

GREETINGS

From Robert Bruce
Chief, Coast Guard Hearing Office



HEARING OFFICE NEWS

Fall has arrived and there is a chill in the air. The holiday season is fast approaching and in some areas boaters will be decorating their boats with elaborate light displays and participating in holiday boat parades. This is generally a busy time for the Coast Guard Hearing Office because we will receive many of the civil penalty cases generated during the summer boating season between now and the end of the year.

On average, it takes from three to four months or more from the date of an alleged violation for a civil penalty case to be received at the Hearing Office. In many cases, the bulk of that time is spent by the personnel who prepare the cases on attempts to have the charged party correct the safety equipment deficiencies for which they were cited when boarded by the Coast Guard. If satisfactory proof of the correction of the deficiency is provided, the matter will end there and the Hearing Office will never see the case. In other, more complex cases, the time may be spent collecting evidence and putting together a comprehensive case package.

On average, the Hearing Officers take their preliminary action on civil penalty cases within fourteen days of receipt of the case at the Hearing Office. On average, the Hearing Officers take final action between ninety and one hundred and five days from receipt of the case. Certainly, there are cases that vary quite a bit from the averages, but we strive to be fair and to dispose of our cases efficiently.

We appreciate your help in processing cases or responding to our letters in a timely fashion.



In September, the Judge Advocate General signed an updated Commandant Instruction on Coast Guard Hearing Officer Procedures. The update is available at: http://www.uscg.mil/directives/ci/16000-16999/CI_16200_5B.pdf. The instruction is primarily intended to guide Hearing Officers in the performance of their duties in the Coast Guard's civil penalty process, with an emphasis on being fair and impartial, and also affording charged parties their due process rights. The instruction is based on the regulations in 33 C.F.R. Subpart 1.07. In the case of any conflict with the instruction, the regulations are controlling.

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Hearing Office is our Name, Maritime Safety and Security is our Aim

Hearing Office Newsletter Article Index

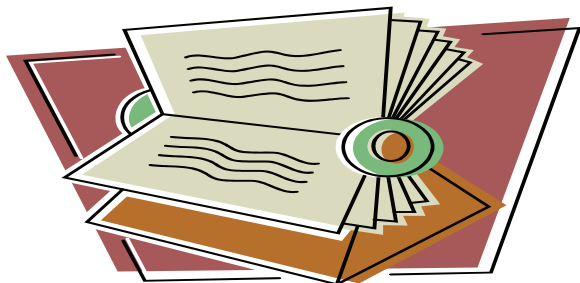
CDR Scott Klinke

Prior to this newsletter, we have published 20 newsletters which contain many informative articles intended for both Coast Guard units and the mariner. These articles were written to: increase the transparency of the hearing office process and procedures; identify and discuss common issues found in civil penalty case files; and clarify regulations/ laws we commonly encounter to foster proper enforcement and compliance. We provide this information in furtherance of our overall mission objective: to **gain mariner compliance**, and to **deter future occurrences of violations of applicable federal statutes or regulations**.

Even though some of these newsletters are a few years old, the information contained within them is still relevant and worth a read or a re-read. Reading them and putting their principles into practice will potentially save both the mariner and the unit time, money, and a lot of unneeded frustration.

In an effort to make this information more accessible, we have created a Hearing Office Newsletter Article Index which outlines the major articles contained in each of the newsletters. This index is available on our website at the top of the Coast Guard Hearing Office News page - http://www.uscg.mil/legal/cgho/CGHO_News.asp. Clicking on the volume number will link you to that newsletter.

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Tests to Measure Blood Alcohol Concentration

LCDR Michele Bouziane

Part 95 of title 33 Code of Federal Regulations states that its purpose is: "...to establish under the influence of alcohol or a dangerous drug standards under 46 U.S.C. 2302 and to prescribe restrictions and responsibilities for personnel on vessels inspected, or subject to inspection, under Chapter 33 of Title 46 United States Code. This part does not pre-empt enforcement by a State of its applicable laws and regulations concerning operating a recreational vessel while under the influence of alcohol or a dangerous drug..." (33 CFR § 95.001(a)). The regulations in Part 95 speak in terms of Blood Alcohol Concentration (BAC). It may be useful to briefly examine the three most commonly used tests to determine whether a person is under the influence of alcohol and compare what they can deliver in terms of BAC.



Blood test

A blood test is generally considered to be the most accurate measure of BAC. A blood test also: is invasive; requires a trained health professional to withdraw the subject's blood; poses particular challenges regarding "chain of custody" of the blood sample; and costs more to process the results.

Breath Test

A breath test is the next best measure of BAC, in terms of accuracy. A properly calibrated machine calculates how much alcohol is in a portion of exhaled air. The Alco-Sensor IV Operator's Manual

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explains how the body metabolizes alcohol (2005 edition, p. 3):

...

Absorption

Once the alcohol reaches the upper intestine it passes into the bloodstream rapidly. Alcohol is then absorbed into all body tissues. Because of its affinity to water, alcohol can be found in blood, urine, saliva and any other body tissue that contains water.

Accumulation

The liver oxidizes alcohol: this oxidation creates body energy. The body metabolizes (converts to energy) alcohol at a rate of approximately an average drink per hour. Because the body metabolizes alcohol at a fixed rate, ingesting alcohol at a rate higher than an average drink per hour [Average drink = 1.5 ounces of 80 proof spirits or, 6-7 ounces of table wine (9% alcohol by volume) or a 12 ounce glass of beer (5% alcohol by volume)] results in a cumulative effect - increasing blood alcohol concentration.

The manual describes Alco-Sensor operation thus:

Theory and Design of the Alco-Sensor IV

The Alco-Sensor IV contains a fuel cell sensor and an electrically operated piston sampling pump. The fuel cell is a porous disk coated with a thin layer of platinum black on both faces and saturated with an electrolyte. The cell is supported at its outer edge in the fuel cell case.

While a subject is blowing and when deep lung breath is reached the piston sampling pump is activated. A small, fixed volume of deep lung

breath is drawn onto the upper surface of the cell, and alcohol is subsequently converted to acetic acid and electrons

are released. A signal is generated on the fuel cell as a result of the oxidation of any alcohol from the breath sample.



The resulting electric current is translated into a Breath or Blood concentration of alcohol and digitally displayed on the Alco-Sensor IV.

If there is no alcohol present in the breath sample, no oxidation will occur. Because no electrons will be released, no current will be generated and the result displayed will be a zero reading.

The Alco-Sensor IV fuel cell responds to alcohol in the human breath. It will not respond to acetone which may be found in the breath of a diabetic, dieter or highly exercised individual. In fact, it has no significant cross sensitivity to any known substance that might be found in a living human subject after a 15-minute deprivation period...

Urine Test

Although BAC can be calculated from a urine test, alcohol in a urine sample is less directly related to BAC at any particular time than a blood or breath

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test. One reason is because the amount of alcohol in the bladder changes with the accumulation of urine. Another reason is that heavier drinkers develop a "tolerance" to alcohol, and can metabolize and excrete alcohol more quickly than light or non-drinkers.

To get a better picture of the amount of alcohol in the blood, therefore, most law enforcement officials will insist that a subject: take one urine test to void the bladder; wait 20 minutes; and then take a second urine test. Computations are then performed to arrive at a comparable BAC.

The law enforcement official may attempt to get a history of when the subject last ingested alcohol, how much, etc. Getting accurate information under the circumstances is questionable.

The urine test is considered to be invasive. Additionally, because the sample can be easily adulterated, collection of the sample should be monitored/observed while it is being provided.

At least one state, Ohio, has an alcohol concentration in urine standard, in addition to the usual BAC standard. However, because 33 C.F.R. 95.025 only refers to adoption of state BAC standards, it seems that evidence of a violation of Ohio's alcohol concentration in urine standard, by itself, would not be sufficient to prove that a person was under the influence of alcohol for purposes of 33 C.F.R. Part 95.

Conclusion

The above information reveals that, comparatively, of the three methods for determining a subject's BAC, the breath test is least cumbersome, most cost-effective, and its results are the least prone to mis-handling or contamination. It is also reasonably accurate.

[Note: Information for this article was garnered from numerous sources on the Web.]

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K.N.O.T.
(Knowledge Note or Tip)



We have often emphasized in this newsletter the need for proofreading and for having a second pair of eyes review Enforcement Summaries for spelling and grammatical errors, etc.

Whether it's the result of a failure to proofread, or use of the AutoCorrect feature of Word, some entries in Enforcement Summaries are amusing. In some cases, the authors have made up new words. Below are some excerpts from recent case files. Identify the incorrect word or words in each sentence. Then consider what would be the most appropriate replacement word/s.

"The owner was very questionative about the process..."

"Operator was corruptive with the CG Boarding Officers."

"Seas were less than one foot, air temperature 70F, and approximant water temperature 70F."

"Mr. [party's name] was very receptive and understating to the circumstances."

"The PWC was stopped with vessel inspection performed."

"The OIC concurred with the dissection to go and find the [vessel's name] and assist it."


"The Sheriff's Deputy asked [party's name] if this was a expectable risk to take..."


"Operator deliberately fled from USCG assets."

"...Mr. [name] has been previously deported due to drug charges and has had his residence receded..."

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DECKPLATE RIVETS

 A civil penalty case file essentially contains information of two types: allegations; and, evidence supporting the allegations. For example, all of the Enforcement Summary, except for the signed Narrative Overview, contains the allegations to be proved, and those allegations are not considered evidence. What is considered evidence is the signed Narrative Overview and other statements or records in the case file containing probative evidence in support of the elements of the violation. Unsupported allegations have no evidentiary value and do nothing to meet the Coast Guard's burden of proof.

 For the purposes of cases alleging violations of 46 U.S.C. § 8103(i), it is critical to know the migration status of non-citizen unlicensed seamen. It is not enough to prove that the unlicensed seaman is not a U.S. citizen, because there is no limit on the employment of Permanent Resident Aliens. If the non-citizen is *in the U.S. illegally*, then that is a violation. If the non-citizen *does not have an authorization to work in the U.S.*, that is also a violation. If you are dealing with one or more non-citizens who are *not permanent resident aliens, but are legally in the U.S. and authorized to work, then you must show that more than 25% of the unlicensed seamen on the vessel have that status* to prove a violation. If information about migration status is from an unidentified source, even an ICE or CBP official, the information may not be very credible and carry little weight with the Hearing Officer. The case file should identify the source of migration status information and why it is trustworthy. Finally, you must include evidence that the vessel was engaged in the fisheries trade.

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WHAT'S IN A NUMBER?

A number is nothing in and of itself. A number is a creation used in counting and measuring. Numbers can convey "magnitude" or "degree." Numbers are relative and can be expressed as a ratio or percentage. Sometimes numbers are used simply as convenience for certain functions such as telephone numbers, lock combinations, etc. Today we hear much about business measures or business metrics. Often these "metrics" are used to measure the success or failure of a desired outcome.

Here are some Coast Guard Hearing Office metrics (as of September 30, 2013) that provide a "how goes it" glimpse into our work:

Number of case files received by the Hearing Office with violation dates in 2009: 1444

Number of case files received by the Hearing Office with violation dates in 2010: 1500

Number of case files received by the Hearing Office with violation dates in 2011: 1629

Number of case files received by the Hearing Office with violation dates in 2012: 1504

Number of case files received by the Hearing Office with violation dates in 2013: 575

Number of case files received by the Hearing Office in 2013 regardless of violation date: 1017

Number of preliminary assessments issued in 2013: 1035

Number of final assessments (FLAP, FLAN, FLW, and FLD) issued in 2013: 685

Number of violation case files returned to the program manager for deficiencies in 2013: 94

Number of hearings held in 2013: 4

JUST FOR FUN—GHOST SHIP GUESSING GAME

Admin Staff

What is a Ghost Ship you may ask...

Ghost Ships are vessels that are found adrift with the crew missing...[cue scary music]...In some cases the vessel had run aground. In the right hand column below you will find the name of five Ghost Ships. Can you guess which name belongs to the description?

1. Found in the Atlantic Ocean on December 04, 1872, with six months of food and water, but not one valuable cargo was touched. The crew just disappeared without a trace.

Ryou-Un Maru

Zebrina

2. This ship belonged to the British Royal Navy. It was believed to have been trapped in the ice of the Arctic and was just abandoned. Later found by an American whaler, which returned the ship to Queen Victoria in 1856. The timbers of this ship were made into a desk that now resides in one of the most important offices in the United States.

Carrol A Deering

HMS Resolute

3. Found wrecked off the Cape Hatteras Shores on January 31, 1921. This ship was believed to be the victim of the legendary Devil’s Triangle, better known as the Bermuda Triangle.

Mary Celeste

4. In the month of October in the year 1917 this schooner was found aground on the coast of France with no crew.



5. This fishing vessel drifted across the Pacific Ocean from Japan and was spotted by the Canadian Air force on March 20, 2012. On April 05, 2012, it was determined by the U.S. Coast Guard that the vessel had to be sunk to avoid further hazards.

