December 22, 1995

Patricia J. Arthur, Esq.
8400 E. Prentice Avenue Penthouse
Englewood, CO 80111

Re: Your request for interpretation of the term, "Pilot in Command

Dear Ms. Arthur:

This is in reply to your letter of November 29, 1995, in which you ask for some guidance on how the FAA interprets the term, "pilot in command", in various situations. In addressing your questions, I will assume that each scenario that is discussed contemplates an aircraft with fully functioning dual controls, with the instructor and the other pilot each having access to the controls.

I will first try to respond specifically to the situation that you have posed. You have described a situation wherein a flight instructor (who is not qualified to act as pilot in command due to lack of a medical certificate) is flying with a qualified and current pilot, and takes over the controls to prevent an unsafe flight condition from developing. In this case, the flight instructor does not become the pilot in command: that designation continues to apply to the other pilot, who (in your example) is qualified to act in that capacity.

Speaking generally, a flight instructor acts as pilot in command when he or she is qualified to do so and there is an understanding between the instructor and the other pilot that the instructor will act as pilot in command on a flight. In most cases, the understanding and agreement between the pilots will control, but occasionally there is no such agreement, and the designation then depends on other factors. First and foremost, is the respective qualifications of the pilots. As you note, where one of the pilots is not qualified (e.g., is a student pilot), the other pilot (assuming that pilot is qualified) is the pilot in command, even if he or she protests to the contrary in a subsequent dispute. Also, where one of two otherwise qualified pilots holds a current medical certificate and the other does not, normally the medically current pilot will be found to be the pilot in command. In cases where both pilots are equally qualified, and where no clear understanding is reached as to pilot in command status prior to the flight, the determination will have to be made on a case-by-case basis, taking into account the relationship between the pilots, the ownership of the aircraft, the role taken by each in preflight preparation and in the

conduct of the flight, the relative experience of the pilots in the type of aircraft, etc. Occasionally it is not easy to make that determination, and it is left up to the NTSB and the courts to make in enforcement proceedings or accident litigation.

Finally, you ask why the FAA takes the position that there are times when flight instructors do not need to hold medical certificates when giving flight instruction. The basis for our position here is that a flight instructor need not act as pilot in command in order to give flight instruction, so long as the pilot being instructed is qualified and current, and the various factors listed above indicate that that pilot is acting as the pilot in command.

I hope that the foregoing answers your questions. As you can see from the foregoing, the determination of pilot in command status is not always easy to make, and in many cases a close examination of all relevant factors must be made to arrive at that determination.

Sincerely,

PETER R. LAYLIN

Attorney