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

Office of the Chief Counsel

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

MAR 1 , 2010

Ronald R. Lamb, Esq.
Wilke, Fleury, Hoffelt, Gould & Birney, LLP
400 Capitol Mall
Twenty-Second Floor
Sacramento, CA 95814

Dear Mr. Lamb:

This letter is in response to your October 27, 2009 request for interpretation of whether certain operations, related to your client's business, could be conducted under part 91.

Your client is considering entering into a contract with a firm of physicians to conduct reviews of the firm's examination facilities. In some instances, your client would fly himself to the examination facilities in his Cessna 182. You indicate that in many cases the firm's physicians would accompany your client as he travels to the facilities. Under the proposed contract, if your client travels to an examination site in his aircraft, he would be reimbursed for the full cost of operating the aircraft regardless of whether he travels alone, or is accompanied by the firm's physicians.

First, to exercise the privileges of his commercial pilot certificate, your client would need to hold at least a second-class medical certificate. *See* § 61.23(a)(2) (stating the requirement to hold "at least a second-class medical certificate when exercising the privileges of a commercial pilot certificate"); Legal Interpretation to John W. Harrington, from Donald Byrne, Assistant Chief Counsel (Oct. 23, 1997). You note that your client holds a commercial pilot certificate, and a third class medical certificate. He would therefore not be permitted to conduct the proposed operations using his commercial pilot certificate. However, we note that a third-class medical certificate is sufficient for operations conducted as a private pilot. *See* § 61.23(a)(3)(i); Legal Interpretation to Harrington.

Private pilots are prohibited from carrying passengers for compensation or hire with certain exceptions. *See* § 61.113(a)-(d). One exception is that a pilot may act as pilot in command of an operation in connection with any business or employment for compensation or hire. *See* § 61.113(b). Such operations must be incidental to the pilot's business or employment, and the aircraft may not carry passengers or property for compensation or hire. *See* Legal Interpretation to Guy Mangiamele, from Rebecca B. MacPherson, Assistant Chief Counsel for Regulations (Mar. 4, 2009). In your scenario, your client's business is to conduct on-site visits of medical facilities, and he would use his personal aircraft to travel to the firm's facilities in order to conduct reviews. We would consider these flights to be incidental to his business and within the scope of § 61.113(b). *See* Legal Interpretation to Mangiamele

(noting that a private pilot may be compensated for the expense of a flight when transporting him or herself to a business meeting). However, § 61.113(b) does not permit carrying passengers or property for compensation or hire. Therefore, although the flights may be incidental to his business, your client could not receive compensation for transporting physicians on those flights. *See* § 61.113(b)(2); Legal Interpretation to Mangiamele; Legal Interpretation to Harrington (stating that the FAA broadly defines compensation, which includes reimbursement of operating expenses).

Additionally, there is a second exception which may allow a private pilot to receive reimbursement from his or her passengers for fuel, oil, airport expenditures, or rental fees, provided that the pilot pays at least his or her pro rata share of the operating expenses. *See* § 61.113(c); Legal Interpretation to Mangiamele; Legal Interpretation to Thomas H. Chero, from John H. Cassady, Assistant Chief Counsel, Regulations and Enforcement Division (Dec. 26, 1985). The FAA has consistently interpreted this exception to require a pilot to share with his passengers a bona fide common purpose for conducting the flight. *See, e.g.*, Legal Interpretation to Don Bobertz, from Rebecca B. MacPherson, Assistant Chief Counsel for Regulations (May 18, 2009); Legal Interpretation to Mangiamele; Legal Interpretation to Peter Bunce, from Rebecca B. MacPherson, Assistant Chief Counsel for Regulations (Nov. 19, 2008); *cf.* § 91.501(b)(8) (permitting transport of a group of people having a common purpose in certain aircraft provided no charge, assessment, or fee, is made for that carriage).

The existence of a bona fide common purpose is determined on a case-by-case basis. Here it appears that if your client was flying to a facility in order to conduct a review, and a physician travelled with him to that facility in order to conduct examinations, a bona fide common purpose for the travel would exist. However, a pilot may only seek reimbursement "from his or her fellow passengers, not from a third party such as [an] employer." Legal Interpretation to Mangiamele. Therefore, the draft contract enclosed with your letter appears to violate the provisions of § 61.113(c) because your client would receive full reimbursement of the operating costs of the aircraft from the firm, rather than a pro rata share from his passengers, for those flights with physicians on board the aircraft.

Accordingly, because your client would be carrying passengers, and would be receiving compensation in the form of reimbursement for operating the aircraft, the proposed operations could not be conducted without a part 119 certificate. *See* § 119.1(a)(1) (stating applicability of part 119 to air carriers and commercial operators in air commerce); § 1.1 (defining "air commerce" and "commercial operator"); Legal Interpretation to Bobertz; Legal Interpretation to Harrington.

This response was prepared by Dean Griffith, Attorney in the Regulations Division of the Office of the Chief Counsel, and was coordinated with the General Aviation and Commercial Division of Flight Standards Service. Please contact us at (202) 267-3073 if we can be of further assistance.

Sincerely,

Rebecca B. MacPherson
Assistant Chief Counsel for Regulations, AGC-200